



**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

**ATTORNEY DOCKET NO. 049212-0103**

Applicants: Bruce BENT et al.  
Title: MONEY FUND BANKING SYSTEM WITH MULTIPLE  
BANKS AND/OR RATES  
Appl. No.: 09/677,535  
Filing Date: 10/02/2000  
Examiner: Daniel S. Felten  
Art Unit: 3696  
Confirmation Number: 4334

**SUPPLEMENTAL LITIGATION NOTICE**

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

This communication is a Supplemental Litigation Notice related to continuations-in-part of the above-referenced patent application.

Applicants are providing a supplemental litigation notice of the concurrent proceeding in which the suits previously notified to the USPTO to enforce U.S. Patent No. 7,509,286 (a continuation-in-part of patent applications: Ser. No. 09/677,535), and to enforce U.S. Patent No. 7,519,551, (a continuation-in-part of patent application Serial No. 09/677,535), and U.S. Patent No. 7,536,350 (a continuation-in-part of patent application Ser. No. 09/677,535), is involved. This litigation was previously disclosed in the IDS filings of June 2, 2009, IDS items F1-F2; and May 14, 2009, E60-E66.

Applicants' representative was notified by the firm of Amster, Rothstein & Ebenstein LLP, acting as litigation counsel for the assignee Island Intellectual Property LLC (defined as "Island IP"), Island IP's exclusive licensees, LIDs Capital LLC ("LIDs") and Intrasweep LLC, and their sublicensee, Double Rock Corporation, collectively, "the Island IP Parties," that the suits previously notified to the USPTO to enforce U.S. Patent No. 7,509,286 (a continuation-in-part of patent applications: Ser. No. 09/677,535, filed on Oct. 2, 2000, Ser. No. 10/071,053, filed Feb. 8, 2002, and Ser. No. 10/382,946 filed Mar. 6, 2003, all these applications are continuations-in-part of patent application Ser. No. 09/176,340, now U.S. Patent No. 6,374,231, currently in reissue), U.S. Patent No. 7,519,551, (a continuation-in-part of patent application Ser. No. 09/176,340, filed on Oct. 21, 1998 now U.S. Patent No. 6,374,231, currently in reissue, and a continuation-in-part of patent application Serial No. 09/677,535), and U.S. Patent No. 7,536,350 (a continuation-in-part of patent application Ser. No. 09/677,535, filed Oct. 2, 2000, and a continuation-in-part of patent application Ser. No. 10/071,053, filed Feb. 8, 2002, both of which are continuations-in-part of patent application Ser. No. 09/176,340, filed Oct. 21, 1998 and now U.S. Patent No. 6,374,231, currently in reissue), against several accused infringers in the U.S. District Court for the Southern District of New York, case no. 09 CV 2675, in the U.S. District Court for the Southern District of New York,

that the following Answers and Counterclaims and Dismissals were filed:

**Lawsuit by Island Intellectual Property LLC and Intrasweep LLC against Institutional Deposits Corp., Complaint for Patent Infringement, Jury Trial Demanded, November 4, 2009, Civil Action No. 09 CV 3079.**

**Lawsuit by Island Intellectual Property LLC and Intrasweep LLC, Answer of Defendant Institutional Deposits Corp. to Complaint for Patent Infringement, December 10, 2009, Case No. 09 CV 03079 (JEC), (Document 16).**

**Lawsuit by Island Intellectual Property LLC, Lids Capital LLC, Double Rock Corporation and Intrasweep LLC against Deutsche Bank AG, Deutsche Bank Trust Company Americas and Total Bank Solutions, LLC, Stipulated Dismissal of Deutsche Bank AG**

**Without Prejudice, November 19, 2009, Civil Action No. 09 CIV 2675 (VM) (AJP) (Document 79).**

Lawsuit by Island Intellectual Property LLC, Lids Capital LLC, Double Rock Corporation and Intrasweep LLC against Deutsche Bank Trust Company Americas and Total Bank Solutions, LLC, **Deutsche Bank Trust Company Americas' First Amended Answer to Consolidated First Amended Complaint and Counterclaims, December 4, 2009, Civil Action No. 09 CIV 2675 (VM) (AJP), (Document 86).**

Lawsuit by Island Intellectual Property LLC, Lids Capital LLC, Double Rock Corporation and Intrasweep LLC against Deutsche Bank Trust Company Americas and Total Bank Solutions, LLC, **Total Bank Solutions, LLC's First Amended Answer to Consolidated First Amended Complaint and Counterclaims December 4, 2009, Civil Action No. 09 CIV 2675 (VM) (AJP) (Document 87).**

Lawsuit by Island Intellectual Property LLC, Lids Capital LLC, Double Rock Corporation and Intrasweep LLC against Promontory Interfinancial Network LLC, MBSC Securities Corporation, Deutsche Bank AG, Deutsche Bank Trust Company Americas and Total Bank Solutions, LLC, **Answer and Counter Claims, Answer of Defendant MBSC Securities Corporation,, June 25, 2009, Case No. 09 CV 2675.**

Lawsuit by Island Intellectual Property LLC, Lids Capital LLC, Double Rock Corporation and Intrasweep LLC against Promontory Interfinancial Network LLC, MBSC Securities Corporation, Deutsche Bank AG, Deutsche Bank Trust Company Americas and Total Bank Solutions, LLC, **Answer and Counter Claims, Answer of Defendant Promontory Interfinancial Network, LLC, June 25, 2009, Case No. 09 CV 2675.**

Lawsuit by Island Intellectual Property LLC, Lids Capital LLC, Double Rock Corporation and Intrasweep LLC against Promontory Interfinancial Network LLC, MBSC Securities Corporation, Deutsche Bank AG, Deutsche Bank Trust Company Americas and Total Bank Solutions, LLC, **Consolidated First Amended Complaint, Jury Trial Demanded, June 11 2009, Civil Action No. 09 CIV 2675 (VM).**

Lawsuit by Island Intellectual Property LLC, Lids Capital LLC, Double Rock Corporation and Intrasweep LLC against Promontory Interfinancial Network LLC, MBSC Securities Corporation, Deutsche Bank AG, Deutsche Bank Trust Company Americas and Total Bank Solutions, LLC, **Jury Trial Demanded, Deutsche Bank AG's Answer To Consolidated First Amended Complaint, June 25, 2009, Civil Action No. 09 CIV 2675.**

Lawsuit by Island Intellectual Property LLC, Lids Capital LLC, Double Rock Corporation and Intrasweep LLC against Promontory Interfinancial Network LLC, MBSC Securities Corporation, Deutsche Bank AG, Deutsche Bank Trust Company Americas and Total Bank Solutions, LLC, **Jury Trial Demanded, Deutsche Bank Trust Company Americas' Answer To Consolidated First Amended Complaint and Counter Claims, June 25, 2009, Civil Action No. 09 CIV 2675.**

Lawsuit by Island Intellectual Property LLC, Lids Capital LLC, Double Rock Corporation and Intrasweep LLC against Promontory Interfinancial Network LLC, MBSC Securities Corporation, Deutsche Bank AG, Deutsche Bank Trust Company Americas and Total Bank Solutions, LLC, **Jury Trial Demanded, Total Bank Solutions, LLC's Answer To Consolidated First Amended Complaint and Counter Claims, June 25, 2009, Civil Action No. 09 CIV 2675.**

Lawsuit by Island Intellectual Property LLC, Lids Capital LLC, Double Rock Corporation and Intrasweep LLC against Promontory Interfinancial Network LLC, MBSC Securities Corporation, Deutsche Bank AG, Deutsche Bank Trust Company Americas and Total Bank Solutions, LLC, **Stipulated Dismissal of Counts I-III of Defendant Promontory Interfinancial Network, LLC's, Counterclaim with Prejudice, October 19, 2009, (Document 68).**

Lawsuit by Island Intellectual Property LLC, Lids Capital LLC, Double Rock Corporation and Intrasweep LLC against Promontory Interfinancial Network LLC, MBSC Securities Corporation, Deutsche Bank AG, Deutsche Bank Trust Company Americas and Total Bank Solutions, LLC, **Stipulation and Order, October 29, 2009, Case No. 09 CV 2675 (VM) (AJP) (Document 73).**



Lawsuit by Island Intellectual Property LLC, Lids Capital LLC, Double Rock Corporation and Intrasweep LLC against Promontory Interfinancial Network LLC, MBSC Securities Corporation, Deutsche Bank AG, Deutsche Bank Trust Company Americas and Total Bank Solutions, LLC, **The Island Plaintiffs' Reply to Defendant Deutsche Bank Trust Company Americas' Counterclaims, July 9, 2009, Civil Action No. 09 CIV 2675 (VM).**

Lawsuit by Island Intellectual Property LLC, Lids Capital LLC, Double Rock Corporation and Intrasweep LLC against Promontory Interfinancial Network LLC, MBSC Securities Corporation, Deutsche Bank AG, Deutsche Bank Trust Company Americas and Total Bank Solutions, LLC, **The Island Plaintiffs' Reply to Defendant MBSC Securities Corporation's Counterclaims, July 9, 2009, Civil Action No. 09 CIV 2675 (VM).**

Lawsuit by Island Intellectual Property LLC, Lids Capital LLC, Double Rock Corporation and Intrasweep LLC against Promontory Interfinancial Network LLC, MBSC Securities Corporation, Deutsche Bank AG, Deutsche Bank Trust Company Americas and Total Bank Solutions, LLC, **The Island Plaintiffs' Reply to Defendant Promontory Interfinancial Network LLC's Counterclaims, July 9, 2009, Civil Action No. 09 CIV 2675 (VM).**


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The Commissioner is hereby authorized to charge any additional fees which may be required regarding this submission under 37 C.F.R. §§ 1.16-1.17, or credit any overpayment, to Deposit Account No. 19-0741. Should no proper payment be enclosed herewith, as by the credit card payment instructions in EFS-Web being incorrect or absent, resulting in a rejected

or incorrect credit card transaction, the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 19-0741.

Respectfully submitted,

Date 1/7/18

By 

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**COPY**  
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UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

NOV 04 2009

JAMES N. HATTEN, Clerk  
Deputy Clerk

-----X  
ISLAND INTELLECTUAL PROPERTY  
LLC and INTRASWEEP LLC,

Plaintiffs,

v.

INSTITUTIONAL DEPOSITS CORP.,

Defendant.  
-----X

Civil Action No.:

**1 09-CV-3079**

**COMPLAINT**

**JURY TRIAL DEMANDED**

**COMPLAINT FOR PATENT INFRINGEMENT**

Plaintiffs Island Intellectual Property LLC ("Island IP") and Intrasweep LLC ("Intrasweep") (collectively, the "Island Plaintiffs"), by and through their attorneys, bring forth their complaint against Defendant Institutional Deposits Corp. ("IDC").

The Island Plaintiffs allege as follows:

**NATURE OF THE ACTION**

1.

This is an action for patent infringement arising out of Defendant IDC's infringement of U.S. Patent No. 7,536,350 generally relating to computerized

account management techniques used with insured deposit accounts offered by multiple banks.

2.

Specifically, this Complaint asserts claims against Defendant IDC arising from its infringement of at least Claims 12 through 16 of U.S. Patent No. 7,536,350, issued on May 19, 2009, and entitled "Systems and Methods for Providing Enhanced Account Management Services for Multiple Banks" ("the '350 Patent").

3.

A true and correct copy of the '350 Patent is attached hereto as Exhibit A.

#### **THE PARTIES**

4.

Plaintiff Island IP is a limited liability company, organized and existing under the laws of the State of Delaware. Island IP's principal place of business is located at 1250 Broadway, Thirty-Second Floor, New York, NY 10001.

5.

Plaintiff Intrasweep is a limited liability company, organized and existing under the laws of the State of Delaware. Intrasweep's principal place of business is located at 1250 Broadway, Thirty-Second Floor, New York, NY 10001.

6.

Upon information and belief, Defendant IDC is a corporation organized and existing under the laws of the State of Florida with a place of business at 2103 Coral Way, Suite 202, Miami, Florida 33145. IDC also maintains an office at 4463 Cherokee St. # 200, Acworth, Georgia 30101, within this District.

**JURISDICTION AND VENUE**

7.

This is a civil action for patent infringement arising under the United States patent statutes, 35 U.S.C. § 1 *et seq.*

8.

This Court has jurisdiction over the subject matter of this action under 28 U.S.C. §§ 1331 and 1338(a).

9.

Upon information and belief, Defendant IDC is subject to this Court's personal jurisdiction because it does substantial business in this judicial district, including: (i) offering and/or operating its banking services within this State and this District; (ii) maintaining an office within this State and this District; and (iii) offering and/or operating its infringing insured deposit program within this State and in this District.

10.

Venue is proper in this judicial district under 28 U.S.C. §§ 1391(b)-(c) and 1400(b).

**FACTUAL BACKGROUND**

11.

The Island Plaintiffs are industry leaders in providing cash management and monetary regulation systems.

12.

The principals of Double Rock Corp. ("Double Rock"), the corporate parent of Plaintiffs Island IP and Intrasweep, developed an innovative product known as "insured deposits," which provides financial service institutions with the ability to offer customers FDIC-insured, interest bearing demand accounts, with unlimited checking.

13.

One type of insured deposits product, developed by Double Rock and now offered through Intrasweep, is an "on balance sheet" cash sweep solution for banks that helps banks grow core deposits.

14.

Since its first introduction, the principals of Double Rock developed improvements to the insured deposits product.

15.

Various improvements developed by the principals of Double Rock for the insured deposits product offered by banks relate to providing banks the ability to join a network where they can obtain reciprocity for funds put into the network, thus providing the banks' clients enhanced FDIC insurance protection while maintaining a greater amount of funds on the banks' balance sheets.

#### **THE PATENT-IN-SUIT**

16.

The '350 Patent claims a novel method of managing client funds by providing banks the ability to provide client accounts with increased FDIC insurance, yet maintain a corresponding amount of assets to the excess deposits on the banks' books.

17.

Island IP, a wholly-owned subsidiary of Double Rock, is the owner of all rights, title and interest in the '350 Patent.

18.

Intrasweep, also a wholly-owned subsidiary of Double Rock, is the exclusive licensee of Island IP for the '350 Patent with respect to, *inter alia*, providing cash management services for banks in connection with money market

deposit accounts and demand deposit accounts that facilitate the transfer of funds between money market deposit accounts and demand deposit accounts.

### **IDC'S INFRINGING PRODUCT**

19.

Upon information and belief, Defendant IDC has developed a money management program designated as the "Money Market Account Xtra" ("the IDC MMAX"), which is a money market program for participating banks, which it offers to operate and administer within the United States for others, without authorization from Island IP or Intrasweep.

20.

Upon information and belief, the IDC MMAX provides a money market program using multiple aggregated or omnibus MMDA accounts at multiple program banks.

21.

Upon information and belief, the IDC MMAX product allows banks to obtain deposits from the system based on the amount of funds the participating bank puts into the system. This is known in the industry as reciprocity or a reciprocating MMDA sweep.



22.

Upon information and belief, IDC utilizes a computer system to allocate customers' balances amongst the program banks to provide them with extended FDIC insurance.

23.

Upon information and belief, IDC's computerized recordkeeping system allows for electronically updating individual account balances based on client activity and a reciprocating MMDA sweep program.

24.

Upon information and belief, banks participating in the IDC MMAX program maintain client funds in multiple banking institutions including the primary bank.

25.

Upon information and belief, the computer systems used in connection with IDC MMAX uses the methods claimed in at least Claims 12 through 16 of the '350 Patent.

26.

The IDC MMAX product competes directly with the products offered by Intraweb.

**COUNT ONE**

**(By Plaintiffs Island IP and Intrasweep for Patent Infringement by the Defendant IDC of the '350 Patent)**

27.

Plaintiffs Island IP and Intrasweep incorporate by reference as if fully set forth herein the averments contained within Paragraphs 1 - 26 above.

28.

Defendant IDC has infringed at least Claims 12 through 16 of the '350 Patent, in violation of Title 35, United States Code section 271 through one or more of the following: (1) the manufacture, use, sale, and/or offer for sale of the invention claimed in the '350 Patent; (2) the active inducement of another to infringe the invention claimed the '350 Patent; and/or (3) contributing to the infringement by another of the invention claimed in the '350 Patent.

29.

Unless enjoined by this Court, the Defendant IDC will continue its acts of infringement causing substantial and irreparable harm to Plaintiffs Island IP and Intrasweep.

30.

Plaintiffs Island IP and Intrasweep are suffering and will continue to suffer damages as the direct and proximate result of the Defendant IDC's infringement of the '350 Patent.

31.

Plaintiffs Island IP and Intrasweep are suffering and will continue to suffer irreparable injury as the direct and proximate result of the Defendant IDC's infringement of the '350 Patent.

**PRAYER FOR RELIEF**

WHEREFORE, the Island Plaintiffs request judgment against Defendant IDC as follows:

A. That the Defendant IDC be held liable for infringement of at least Claims 12 through 16 of the '350 Patent.

B. That an injunction issue against the Defendant IDC, its officers, agents, servants, employees, attorneys, parent and subsidiary corporations, assigns and successors in interest, and those persons in active concert or participation with them, enjoining them from continued acts of infringement of the '350 Patent.

C. That the Defendant IDC be ordered to pay to the Island IP Plaintiffs damages adequate to compensate the Island Plaintiffs for the acts of

infringement of the Defendant IDC together with interest and costs, pursuant to 35 U.S.C. § 284.

D. That the Court award such other and further relief as the Court deems just and proper.

**DEMAND FOR JURY TRIAL**

32.

The Island Plaintiffs hereby request a trial by jury.

Submitted this 4<sup>th</sup> day of November, 2009.

Respectfully submitted,

**JOYCE THRASHER KAISER & LISS, LLC**

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(12) **United States Patent**  
**Bent et al.**

(10) Patent No.: **US 7,536,350 B1**  
(45) Date of Patent: **May 19, 2009**

(54) **SYSTEMS AND METHODS FOR PROVIDING  
ENHANCED ACCOUNT MANAGEMENT  
SERVICES FOR MULTIPLE BANKS** 4,597,046 A 6/1986 Musmanno ..... 364/408  
4,674,044 A 6/1987 Karmus ..... 364/408

(75) Inventors: **Bruce Bent, New York, NY (US); Bruce  
Bent, II, New York, NY (US)**

(Continued)

**FOREIGN PATENT DOCUMENTS**

(73) Assignee: **Island Intellectual Property LLC, New  
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JP 10049590 2/1998

(\*) Notice: Subject to any disclaimer, the term of this  
patent is extended or adjusted under 35  
U.S.C. 154(b) by 1404 days.

(Continued)

**OTHER PUBLICATIONS**

(21) Appl. No.: **10/382,946**

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(22) Filed: **Mar. 6, 2003**

(Continued)

**Related U.S. Application Data**

(63) Continuation-in-part of application No. 10/071,053,  
filed on Feb. 8, 2002, and a continuation-in-part of  
application No. 09/677,535, filed on Oct. 2, 2000, said  
application No. 10/071,053 is a continuation-in-part of  
application No. 09/176,340, filed on Oct. 21, 1998,  
now Pat. No. 6,374,231, said application No. 09/677,  
535 is a continuation-in-part of application No.  
09/176,340, filed on Oct. 21, 1998, now Pat. No. 6,374,  
231.

Primary Examiner—Jagdish N Patel

(74) Attorney, Agent, or Firm—Foley & Lardner LLP

(60) Provisional application No. 60/442,849, filed on Jan.  
27, 2003.

(57) **ABSTRACT**

(51) Int. Cl. **G06Q 40/00** (2006.01)

(52) U.S. Cl. .... **705/39; 705/38; 705/35**

(58) Field of Classification Search .... **705/39,  
705/35**

See application file for complete search history.

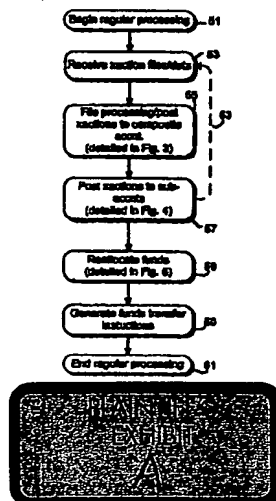
This invention includes methods for delivering account man-  
agement services to multiple financial institutions that pro-  
vide for customer deposit accounts without transaction but  
than nevertheless offer interest and receive enhanced deposit  
insurance. The methods apply at least one customer transac-  
tion to that customer's deposit account, and then re-allocate  
customer-deposited funds among the plurality of financial  
institutions in order that, for each customer, the risk of loss is  
not substantially increased, and that, for each financial insti-  
tution, the amount of customer-deposited funds is not sub-  
stantially decreased. Preferably, risk of loss is reduced by  
increasing the fraction of each customer's deposited funds  
covered by FDIC deposit insurance, and interest and  
enhanced insurance are available by innovative management  
of customer transactions and accounts. This invention also  
includes computer systems for practicing the methods and  
program products for accordingly configuring such computer  
systems.

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**18 Claims, 5 Drawing Sheets**



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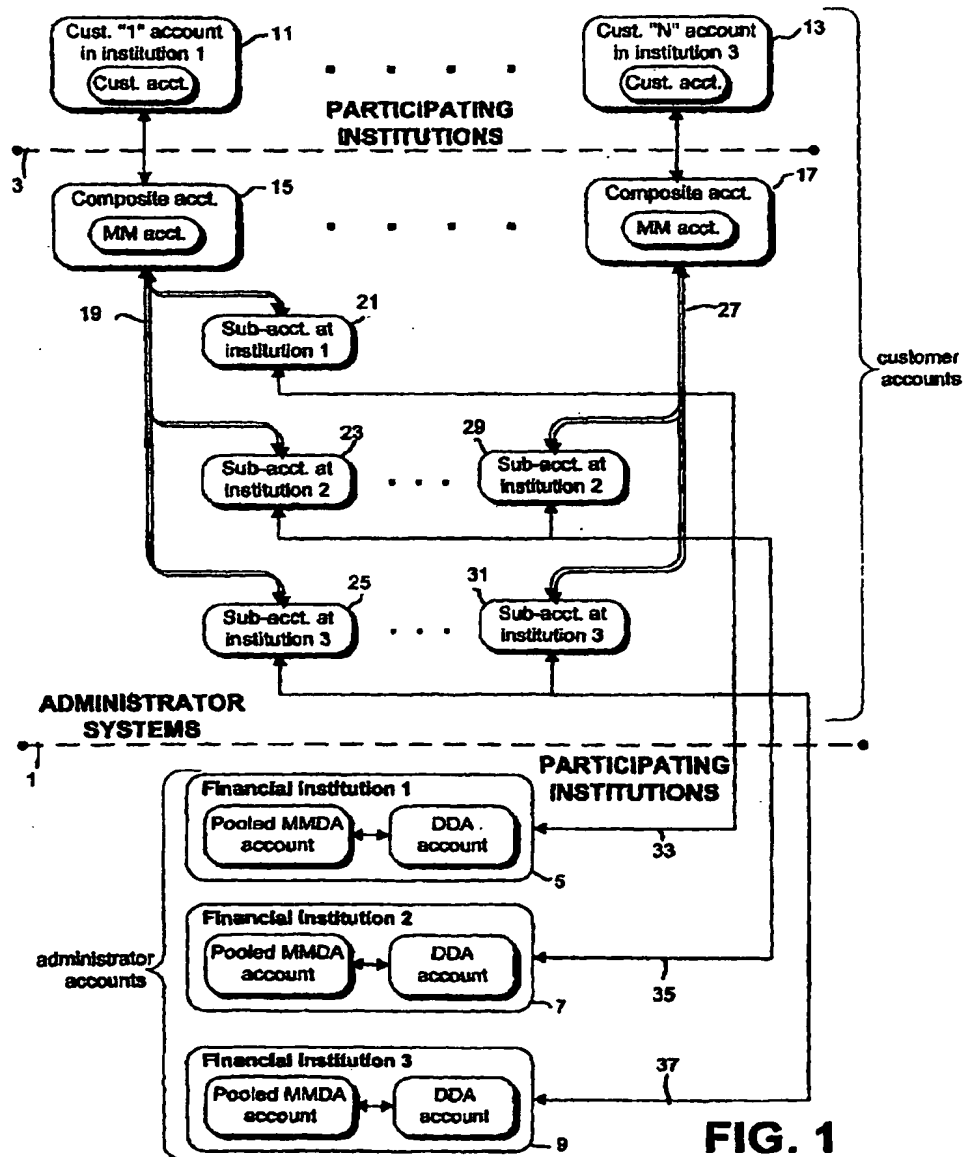
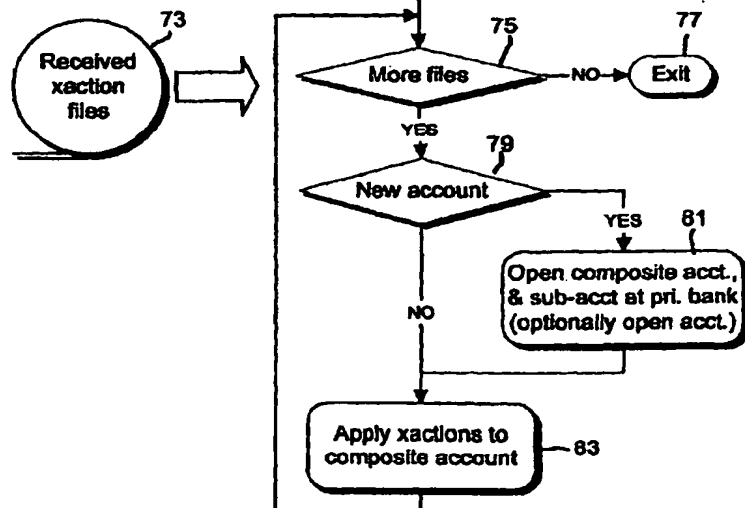
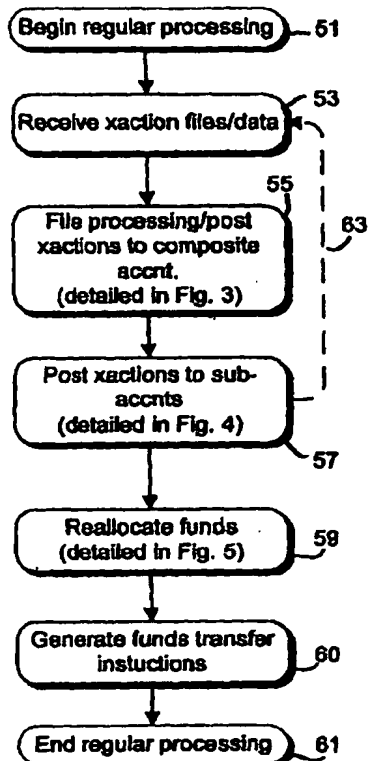


FIG. 1



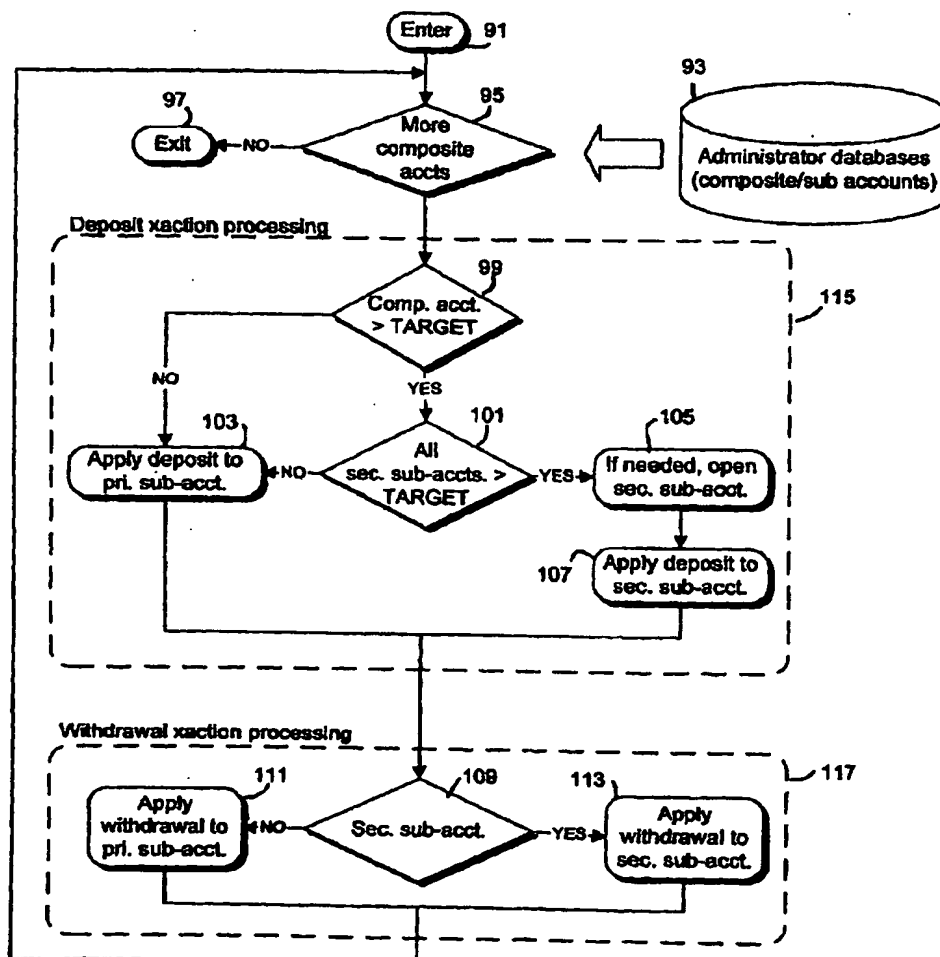


FIG. 4

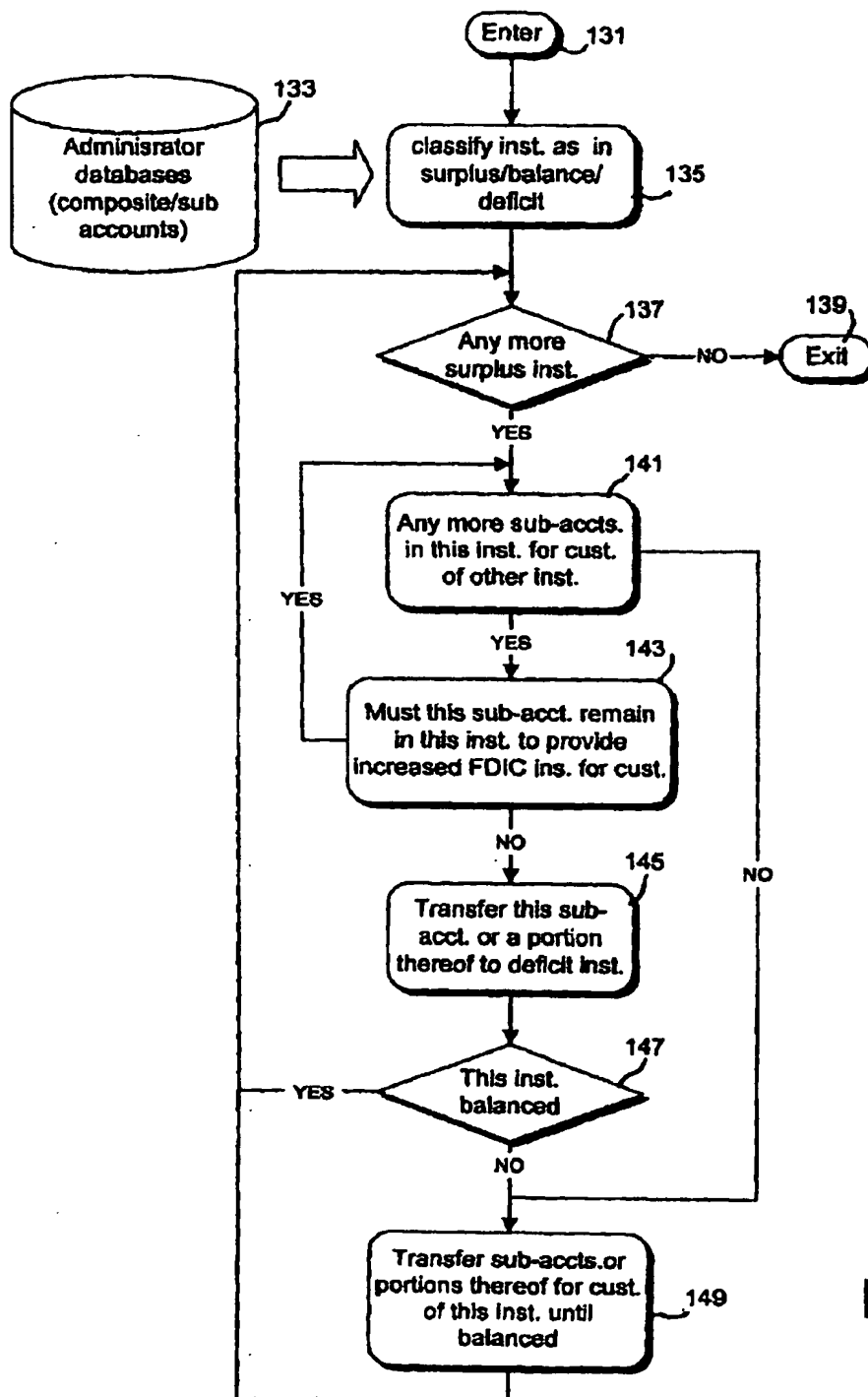


FIG. 5

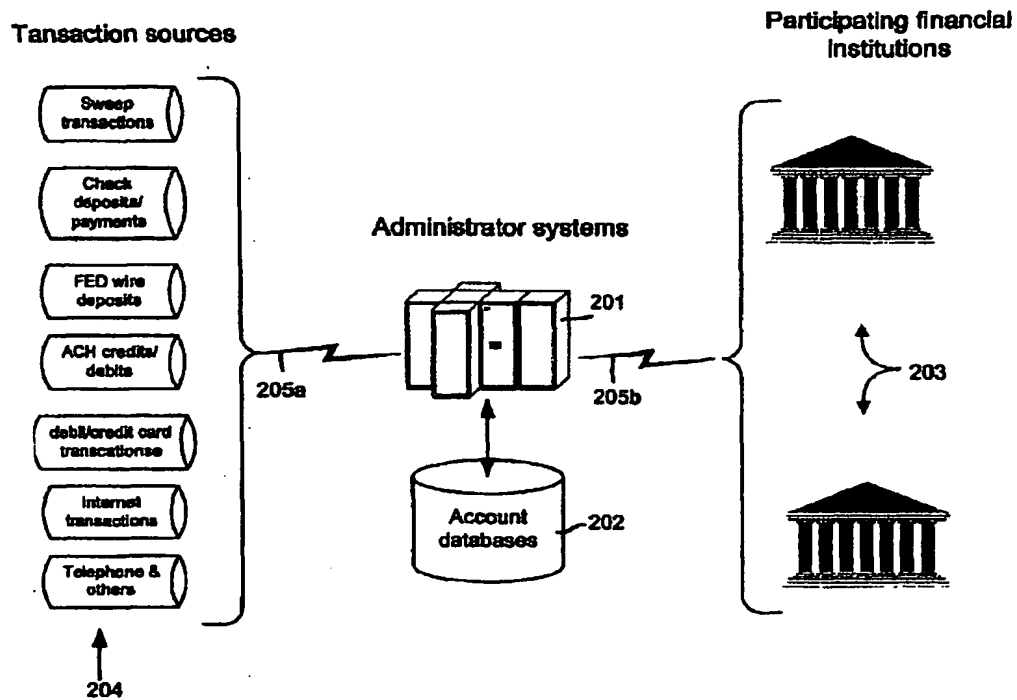


FIG. 6

## SYSTEMS AND METHODS FOR PROVIDING ENHANCED ACCOUNT MANAGEMENT SERVICES FOR MULTIPLE BANKS

This application is a continuation-in-part of application Ser. No. 09/677,535, filed Oct. 2, 2000, and a continuation-in-part of application Ser. No. 10/071,053, filed Feb. 8, 2002, both of which are continuations-in-part of U.S. patent application Ser. No. 09/176,340, filed Oct. 21, 1998 and now U.S. Pat. No. 6,374,231 B1. This application also claims benefit of provisional application 60/442,849, filed Jan. 27, 2003. The entirety of the disclosure of each of these applications is incorporated herein by reference for all purposes.

### 1. FIELD OF THE INVENTION

The present invention provides systems and methods that deliver account management services to multiple participating financial institution (including banks) so that they may offer to their customers interest-earning, deposit accounts without withdrawal restrictions and/or with enhanced deposit insurance. This invention's management methods preferably maintain each participating financial institution's total customer funds on deposit.

### 2. BACKGROUND OF THE INVENTION

It would be desirable if depositors and investors could obtain fully-insured, interest-bearing accounts with an unlimited number of transactions or withdrawals per month. However, present statutory and regulatory requirements, which in the United States ("US") are generally codified as Title 12 of the United States Code ("U.S.C.") (Banks and Banking), restrict the flexibility of banks and savings institutions, and limit investors and depositors seeking investments and deposits having a lower risk profile to a rather limited selection of choices, all of which suffer inhibiting constraints.

First, Title 12 U.S.C. Chapter 3 (Federal Reserve System), along with Title 12 Code of Federal Regulations ("C.F.R.") Chapter II Part 204 (12 C.F.R. §§ 204.1-204.136) (Federal Reserve Board ("FRB") Regulation D) and Title 12 C.F.R. Chapter II Part 217 (12 C.F.R. §§ 217.1-217.101) (FRB Regulation Q), prevents certain financial institutions from paying interest on deposit accounts that permit unlimited (at least more than six) monthly withdrawals of deposited funds (known as "demand deposit accounts" or "DDAs"). More specifically, 12 C.F.R. 329.2 states that "no bank shall, directly or indirectly, by any device whatsoever, pay interest on any demand deposit". A "deposit" is any money placed into a checking account, savings account, Certificate of Deposit (CD), or the like. In a "demand" account, the owner can make an unlimited number of funds transfers to another account (having the same or a different owner), or to a third party, typically by bank drafts, checks, credit cards, and debit cards. In other words, an account in which a depositor has the ability to make six or more monthly transfers will be deemed a demand account and no interest will be payable on the funds deposited therein (unless the funds of a non-commercial entity are held in a NOW account under 18 U.S.C. 1832(a)). Owners of demand accounts are denied interest on their funds.

Second, 12 U.S.C. § 1821(a) limits government-guaranteed deposit insurance provided by the Federal Deposit Insurance Corporation ("FDIC") to a maximum coverage of \$100K (K=1,000) for each owner of (or, generally, each ownership interest in) funds deposited in a single insured institution. The FDIC, created under Title 12 U.S.C. Chapter 3 (the

Federal Deposit Insurance Corporation), provides insurance for deposits in most United States banks through its Bank Insurance Fund ("BIF") and in most United States savings institutions through its Savings Association Insurance Fund ("SAIF"). The rules governing insurance of deposits in institutions insured by the BIF and the SAIF are the same, and base insurance coverage on the concept of ownership rights and capacities. Funds held in different ownership categories are insured separately from each other; and funds owned by the same ownership category but held in different accounts at the same financial entity are subsumed under the same insurance coverage limit.

Banks and other savings institutions have developed several approaches, which include money-market mutual fund sweeps and re-purchase agreement ("repo") sweeps, offered by third parties in an effort to compete with those financial institutions, for example broker/dealers, who are able to offer interest on cash balances for all their customers including commercial customers by using money-market mutual funds. However, these approaches are disadvantageous in that they involve a removal of commercial customer deposits from the bank's balance sheets into the assets of the money market-mutual fund provider, and also of the deposits from FDIC protection. This disadvantage is especially burdensome for smaller banks, such as regional or local banks.

Therefore, what is needed are systems and methods for providing fully-insured (i.e., with insurance that may exceed \$100,000), interest-bearing accounts with an unlimited number of transactions per month without removing net deposits from participating financial institutions. It would be especially advantageous if these systems could be readily integrated into the existing infrastructure of a bank, savings institution, credit union, or other financial institution in a manner that would minimally disrupt these institution's existing customer relationships.

Citation or identification of any reference in this section or any section of this application shall not be construed that such reference is available as prior art to the present invention. Further, headings and sub-headings are used for convenience and clarity only; they are not to be interpreted in any limiting fashion.

### 3. SUMMARY OF THE INVENTION

The present invention overcomes the above-identified deficiencies in the prior art by providing systems and methods that extend in a novel and advantageous manner certain prior inventions made by one or more of the current inventors. These prior inventions may be briefly summarized as follows (for the purposes of this invention only and without any imitation).

In prior application Ser. No. 09/176,340, filed Oct. 21, 1998 and now U.S. Pat. No. 6,374,231 B1 (the "parent invention") (which is incorporated herein by reference in its entirety for all purposes) systems and methods are disclosed for managing demand accounts of multiple customers of any financial institution. That invention invests the customer account funds in a single aggregated investment account at a bank, and manages the single investment account so that the account funds invested therein earn interest and are insured, while providing for customer deposits and unlimited withdrawals by use of a wide range of financial networks and services. However, insurance for individual customer accounts is limited by the \$100K FDIC maximum-coverage limit, so balances over \$100,000 are not insured.

Prior application Ser. Nos. 09/677,535, 10/071,053, and 60/372,347 (which are incorporated herein by reference in its

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entirety for all purposes) disclose various improvements of the above invention. Prior application Ser. No. 10/071,053, filed Feb. 8, 2002, adapts the above invention to banks, especially smaller banks, that wish to retain close customer relationships and additionally do not wish their ability to make loans affected by sweeping deposited funds to a money-market mutual fund or a difficult-to-manage repurchase program (where assets must be collateralized), because deposited funds can be important as a source for funding loan demand. In that invention, systems and methods are provided that act as an agent of a bank to assist in transferring ("sweeping") funds between customer demand-deposit accounts and interest-earning, insured, investment accounts ("money market" accounts) maintained in the bank. The provided systems integrate closely with the bank's existing systems, and may optionally interface with external financial network and service systems.

Prior application Ser. No. 09/677,535, filed Oct. 2, 2000, overcomes the \$100K limit on individual deposit insurance by providing systems and methods managing multiple insured investment accounts with each account held at a separate bank (or other financial institution). The invention transfers the bank-customer's funds among the separate banks so that no customer of the bank has more than \$100K invested in any one of the separate banks. Deposits are managed also to earn interest while being available for unlimited withdrawals by use of a wide range of financial networks and services. Accordingly, customers of the bank with demand account balances exceeding \$100K may be now covered by FDIC insurance available through multiple banks, although deposit balances exceeding approximately \$100K must be transferred out of the initiating bank.

Prior application Ser. No. 60/372,347, filed Apr. 12, 2002 adds a flexible interest rate feature to the above inventions. According to this feature, a financial institution (or a bank) may pay interest on a customer account that depends on a wide range of factors, for example, on the balance in the customer account, on the total customer balance at the financial institution, on marketing considerations, and so forth.

Accordingly, the objects of the present invention include systems and methods that provide participating financial institutions with the ability to offer to customers deposit accounts an unlimited number of monthly transactions while improving upon these prior inventions.

It is an object of the invention that the funds deposited in the insured, interest-earning, deposit accounts at participating financial institutions remain on the institutions' books and available for normal business purposes, such as a source for loan funding; or in other words, that the methods of this invention maintain each participating institutions total deposited funds.

It is another object of the invention that funds deposited in the deposit accounts at participating financial institutions earn interest.

It is another object of the invention that interest may be earned on customer deposits at interest rates based on plural discrete tiers (or on a more smooth function) selected in accordance with each customer's account parameters such as current cash balance, nature of the customer-financial entity relationship, and so forth.

It is another object of the invention that funds deposited in one of the interest-earning, deposit accounts at the participating financial institutions are fully FDIC-insured, whether or not they exceed \$100K.

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It is another object that the systems and methods of the invention be readily integrable into the existing institutional infrastructure and have minimal impact on presently-existing customer relationships.

It is another object of the invention that its methods and system to permit customers to deposit funds into, and to withdraw funds from, an account by use of many financial instruments networks, and services, and to accept and process customer deposit/withdrawal transactions however presented, such as in periodic batches or files.

These objects are met at least in part by systems and methods that manages a novel arrangement of accounts, especially pairs of demand deposit and money market accounts holding funds from plural customer sub-accounts at the participating banks, that is particularly advantageous in view of the applicable United States banking laws and regulations. To simplify subsequent descriptions, the following paragraphs describe aspects of the banking environment of this invention and explain certain terms used throughout the description.

Concerning the banking environment, generally, relevant banking laws and regulations prohibit institutions from paying interest on deposit accounts not subject to any withdrawal restrictions whatsoever (referred to as "demand accounts," or as "demand deposit accounts" abbreviated as "DDA"), while permitting interest on deposit accounts subject to withdrawal restrictions, such as a required withdrawal notice (referred to as "savings accounts").

Nevertheless, certain deposit accounts not requiring withdrawal notice but subject to other withdrawal restrictions may still be deemed "savings accounts" capable of earning interest. For example, accounts known as money market deposit accounts ("MMDA") that do not require withdrawal notice (but may so require it at any time) are nevertheless deemed savings accounts capable of earning interest if withdrawals or transfers to third parties are limited to less than six monthly. (See 12 C.F.R. § 204.2(d)(1).) But certain types of transfers from MMDAs are exempt from this six-withdrawal limit. (See 12 C.F.R. § 204.2(d)(2).) Specifically, an unlimited number of monthly transfers may be made between an interest-earning MMDA account and a DDA account if (i) both accounts are in the same financial institution (or bank), (ii) both accounts are registered in the same name, and (iii) transfers are ordered in person, such as by messenger or other agent. An unlimited number of deposits into savings accounts or MMDAs is always allowed.

Second, the \$100K FDIC insurance limitation is determined per-beneficial-ownership category per-insured institution, and is not determined on a per-account basis. For example, all ownership interests of a single person (or other entity) held in a single insured institution, whether they are held in multiple separate accounts and whether they are held in a single account pooled with the interests of others, are all aggregated for purposes of the \$100K coverage limitation. Further, a person's ownership interests in separate insured institutions are treated separately, and are separately aggregated in each institution for purposes of the separate \$100K coverage limitation available in each institution. (See 12 U.S.C. § 1821(a)(1)(C).) Consequently, a person's deposit coverage will not be reduced or jeopardized if it is combined with the interests of others in a single account, and may be increased if that person's ownership interests are deposited in separate or aggregated accounts in multiple institutions.

Therefore, this invention establishes and manages a pair of identically-registered accounts (referred to as a "MMDA-DDA pair") in one or all of the financial institutions (or banks) participating in an implementation of this invention. One account of each pair is an interest-earning MMDA subject to



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withdrawal limitations; the other account is a DDA not subject to any withdrawal limitations and therefore not interest-earning. Funds deposited in participating banks by participating customers are invested and held in the MMDAs in the participating institutions. Participating customers may be, for example, individuals, business entities, governmental entities, and so forth, because MMDA depositors may be of many organizational types. The DDA of each pair serves merely as a conduit through which to withdraw or transfer funds from (and, optionally, to) the paired MMDA. Since both accounts of each account-pair are identically registered at each participating bank, and since fund transfers from the MMDA through the paired DDA are ordered in person (by messenger or other agent), funds invested in the MMDA continue to earn interest even though they may be withdrawn through the paired DDA without restriction. In this manner, this invention achieves its objectives while comporting with the above-described banking environment.

In many embodiments, an organization entity (referred to as an "operating entity" or as an "administrator") has responsibility for the previously-described account pairs, along with other accounts maintained and managed by this invention, and for funds transfers among the accounts. In particular, the MMDA-DDA account pairs in the participating banks may be registered as "administrator (or organizational name of the operating entity) as agent for designated customers." The operating entity typically will act as an agent for the participating customers and the participating banks according to agreements entered into when customers or banks become participants in implementations of this invention. The administrator (or other operating entity) may also manage and operate the systems and methods of the present invention. The administrator, or operating entity, may be structured according to the many known forms of business organization, such as proprietorship, partnership, joint venture, corporation, and the like. Also, the administrator may be a business entity independent of all participating banks, or may be a subsidiary of one of the participating banks, or may be a joint venture of the banks.

Next, for convenience and clarity, the following terms used in the present specification have the following meanings. First, the term "financial institution" (and "participating financial institution") refers to institutions that may participate in the present invention by virtue of having certain preferred characteristics. One characteristic is that participating financial institutions offer accounts against which customers may make a variety of deposit and withdrawal transactions, where different types of participating institutions may offer customers different types of transactions. Another preferred characteristic is that a participating financial institution offer interest-bearing, insured MMDA-type accounts, or be associated in some fashion with a financial institution that does offer such accounts. Such MMDAs are generally offered by banks, and because the present invention manages participating customer accounts by investing their funds in one or more MMDAs, a participating financial institution derives greater benefit from the invention if it receives some value for these MMDA investments by being associated with one or more banks holding these MMDA investment accounts. In particular, banks may be participating financial institutions and receive direct benefit from the methods of the present invention by both offering customer accounts and providing MMDAs for investment, which may be available according to this invention as deposit accounts for other participating financial institutions. Also, broker/dealers, investment advisors, insurance companies, and so forth that may be participating financial institutions. Here, the funds of the customer

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accounts are invested in MMDAs in a bank designated by participating institution. A designated bank may not have any particular affiliation with the designating financial institution, or may be affiliated or associated in manners known in the art (for example, a corporate entity with a banking subsidiary and a broker/dealer, an insurance, or an investment advisory subsidiary, or a bank or bank holding company with a broker/dealer subsidiary, or so forth).

Therefore, generally, the term financial institution refers to all such preferred institutions with any banking association or affiliation permitted by law and regulation. However, for convenience and clarity but without limitation, the following description is often in terms of embodiments where participating institutions are banks holding both customer accounts and the investment MMDAs. If some participating customer accounts are in, for example, a broker/dealer, it is to be understood that the associated MMDA-DDA pair is held in the affiliated or associated bank. Also, where customer accounts are referred to in the banking embodiment as DDAs, it is also to be understood that in general customer accounts may also be broker/dealer accounts, investment advisory accounts, and so forth.

Customers of a participating financial institution (or bank) may individually choose whether or not one or more of their accounts at that institution will participate in the enhanced insurance and management services of this invention. Managed accounts are referred to as "participating customer accounts," or for convenience, simply as "customer accounts" or even as "customers." Without limitation, a single individual customer may have non-participating accounts at participating institutions, or may have two or more participating accounts at the same or at different participating institutions, or so forth.

Funds deposited in a participating customer account are referred to as that "customer's participating funds" or more simply as "customer's funds" or as "participating funds." Also, all participating funds held in the participating customer accounts at a single participating financial institution are referred to as that institution's "aggregate (or total) participating customer funds," and all funds held at an institution for all participating customers (not just that institution's customers) are referred to as the institutions "aggregate (or total) participating deposits."

Where attention is focused on a particular one of the participating institutions, it will often be referred to as "this institution," while the remaining participating institutions will be then referred to as the "other institutions." Further, the institution of a customer account, that is the institution at which the customer transacts business for that account, is referred to as the "primary institution" for that customer account or customer; other participating banks are "secondary banks" for that customer account or customer. Each participating customer account (or customer) has exactly one primary bank.

Commonly-available deposit insurance (for example, FDIC insurance) often limits coverage to a certain maximum for all the funds of a single ownership category in a single insured institution. It is often preferable for embodiments of this invention to limit the maximum amount of a single customer's funds held in a single institution to a "target amount" (or "target") which is less than the maximum coverage of the available deposit insurance. The target amount is often 99%, or 98%, or 95% or 90%, or other convenient percentage of the coverage limitation. In the case of FDIC insurance, a preferred target amount is 95% of the coverage limitation of \$100K, or \$95K; other exemplary target amounts may be

\$90K or \$98K or \$99K or other amount. Less preferably, the target amount may be 100% of the coverage limitation.

Also, the following abbreviations may be used in this specification and figures: "acct." for account; "cust." for customer; "DDA" for demand deposit account; "inst." for financial institution (such as a bank); "MM" for money market; "MMDA" for money market demand account; "xaction" for transaction.

Now, in view of the above-described banking environment, this invention's objectives are achieved as follows. Generally, the administrator (or operating entity) of an embodiment of the systems and methods of this invention provides account services to multiple participating customers (at least one) with accounts at multiple participating financial institutions (at least two). The administrator establishes and maintains in each participating bank one of the above-described MMDA-DDA account pairs and allocates and invests participating customer funds in the interest-earning MMDA accounts in amounts guided by objectives and rules selected so that objects of this invention are achieved.

A first preferred objective is to allocate and invest customer funds so that each customer has available a substantial maximum amount of deposit insurance available in each particular embodiment consistent with the practicalities of financial transaction processing. Where the available deposit insurance has fixed coverage limits in each participating institution, this objective may be achieved by a rule according to which no more than the target amount of funds (alternatively, no more than the insurance coverage limitation) is invested in each participating institution (or in an associated or affiliated institution). By the use of a target amount, the methods of this invention are able to practically provide a substantial maximum of deposit insurance for a customer. It is preferably that the target amount be as close to the coverage maximum as is consistent with practical transaction administration and processing. If full insurance coverage is not possible, because, for example, the customer account balance exceeds the coverage limitation (or the target amount) times the number of participating institutions, then excess uninsured funds are preferably kept at the customer's primary institution.

More generally, this invention's first objective is to reduce each customer's risk of loss. Preferably deposit insurance is available, and this objective is achieved by the above-described rules which fully insure a customer's deposits if possible. Where deposit insurance is not available for some or all of a customer's deposits, risk may be reduced by dividing a customer's deposits across such participating institutions that are financially independent of each other. For example, customer deposits in excess of the maximum insurance available in an embodiment of this invention, may be spread evenly across the participating institutions. Alternatively, customer deposits may be invested according to rules prescribed by the that customer. For example, the customer may provide a list of participating institutions prioritized for allocation and investment.

A second preferred objective is not to impact each participating institutions total deposited funds. A corresponding rule is that for any transfer of customer funds out of a financial institution to reduce risk of loss, there should be a substantially equal transfer of other participating funds into this institution. For example, if the customers of a participating bank have placed \$100M into the program, then \$100M in deposits should remain on the bank's balance sheet, whether these are deposits of the bank's own customers or of customers of other participating banks (or financial institutions).

This objective is advantageous to institutions which use their deposits for important business purposes, for example, for funding loans.

Investment and allocation of participating funds may also be guided by secondary objectives which should be satisfied if possible without jeopardizing the two previous preferred objectives. One preferred secondary objective advantageous to participating institutions is to not allocate a customer's funds away from that customer's primary bank unless necessary. For example, customers accounts with balances less than \$95,000 should not be allocated to other participating banks. However, meeting the primary (preferred) objectives may make meeting this secondary objective impossible in certain situations. Also, when a customer's balance cannot be fully insured, the excess uninsured funds should be retained in the primary institution. Alternatively, a secondary objective advantageous to customers is to reduce risk by allocating a customer's deposits substantially equally among all independent participating institutions.

In preferred embodiments the allocation and investment processes carry out the invention's objectives with both reasonable accuracy and efficiency by acting in a transaction-by-transaction fashion. Customer funds may be allocated to reduce risk on a transaction-by-transaction basis, with each customer transaction being allocated to a single institution (which may be the primary institution). Transactions are customer withdrawals and deposits of all kinds. To maintain the integrity of each institution's total deposits, the present invention may itself initiate transfer of customer funds between institutions. Most preferably, part of all of customer's funds in one institution may be transferred to another institution. In this preferred embodiment, each institution's deposits can be exactly maintained. Invention processing preferably occurs on a regular basis, for example, on an hourly, or a daily, or a weekly basis, and the like, but the invention is not so limited. In most embodiments, it is expected that processing is performed each business day.

In a preferred embodiment, investment of customer funds to reduce risk is coupled to transferring funds between institutions to preserve total deposits, and both are triggered daily to process the batch of customer transactions received for that day. For example, as each customer transaction is processed, it is assigned to the customer's composite account, which represents all transactions that have posted to the client's account. After being posted to the composite accounts, transactions are then allocated to a selected sub-account, each sub-account being associated with one participating bank and representing that portion of the customer's funds in that participating bank. If this assignment would cause that customer's allocated funds to exceed the target amount in that participating bank, then the transaction is assigned to a sub-account associated with another participating bank in order to maintain or maximize deposit insurance for that customer. After all transactions have been assigned, funds are re-allocated between banks without compromising the customers' deposit insurance so that each bank's total participating deposits equals the total participating deposits of its own customers. Preferably, customer funds are re-allocated only between secondary banks, and are not transferred out of the customer's primary bank.

The methods of this invention are performed by systems including such data processing components and facilities as are understood in the art to be necessary or preferred for performing such financial methods. These system receive and post customer transactions, allocate and invest customer funds in participating institutions, issue commands and requests to cause funds transfers among institutions, includ-

ing in person requests to move funds from a MMDA in a participating (or affiliated or associated) bank to its paired DDA, and track and store records for transactions, fund transfers, and fund allocations in a database.

These system preferably inter-operate with financial systems of the participating institutions for the exchange of necessary data and commands, and may inter-operate differently with different institutions. Generally, inter-operation with institutions may be arranged in one of two configurations. In a first configuration known as a sweep-type arrangement, the systems of this invention inter-operate on the behalf of a participating institution's customers primarily with the systems of that institutions alone (and not with external systems). The institution's own systems then interface to external payment and funds transfer networks on the behalf of its customers, collect their transactions, settle transaction with the external networks, and then provide participating customer transactions to systems of this invention, for example, as daily transaction files. The systems of this invention then receive, allocate, and invest transactions for the institution's participating customers, and inter-operate with the institution's systems to cause funds transfers between the institution and the other participating institutions to preserve deposit positions.

In one variation of this configuration, the institution maintains its own accounts (for example, DDA accounts) for participating customers with minimum balances targeted to cover customers' observed and expected deposit and payment patterns. For example, the target minimum balance may be a percentage based on past account use of the total balance. Customer account funds in excess of these target minimum balances are swept to and from the systems and accounts of this invention for management by the methods of this invention.

In a second configuration, the systems of the present invention take a more active role in the management of participating customer accounts at a participating institution. Here, this invention's systems directly interface to external payment and funds transfer networks on behalf of the institution's participating customers and collect customer transactions. These systems may then settle on the behalf of the institution with some or all of the external financial networks, or assist the institution to do so, and will thereby directly accumulate daily customer transaction files for allocation and investment among the participating (or affiliated or associated) banks.

Also institutional systems and the system of this invention may inter-operate in overlapping configurations. The participating institution may collect and settle transactions with some external financial networks, while the invention performs these functions with other financial networks. Here, transaction files from the institution may be merged with transaction files accumulated by this invention's systems prior to funds allocation. This invention may inter-operate with different participating institutions in the same embodiment according to either configuration.

#### 4. BRIEF DESCRIPTION OF THE FIGURES

The present invention may be understood more fully by reference to the following detailed description of the preferred embodiments of the present invention, illustrative examples of specific embodiments of the invention and the appended figures in which:

FIG. 1 illustrates exemplary account structures maintained by this invention;

FIG. 2 illustrates periodic processing performed by this invention;

FIG. 3 illustrates file-processing steps of the periodic processing of this invention;

FIG. 4 illustrates post-to-sub-account steps of the periodic processing of this invention;

FIG. 5 illustrates re-allocation-processing steps of the periodic processing of this invention; and

FIG. 6 illustrates exemplary systems for practicing the present invention.

#### 5. DETAILED DESCRIPTION OF THE PREFERRED EMBODIMENTS

Preferred embodiments of the methods and systems of the invention summarized above are next described. Although the following description is primarily directed to embodiments where the participating financial institutions are banks, the participating financial institution may be non-banks (e.g., broker/dealers, investment advisory firms, and so forth) that are associated or affiliated with a bank as described above. Also, although customer accounts may be described as DDA accounts, it is understood that customer accounts may also be at non-banks and then may have characteristics different from DDAs in banking institutions.

##### Account Structures in the Preferred Embodiments

In preferred embodiments, the present invention establishes and maintains linked administrator and customer accounts in order to efficiently perform its processing. FIG. 1 illustrates exemplary account structures for a number, N, of customers at three financial institutions.

In particular, the accounts above separator line 3 represent for customers who are participating in this invention their managed accounts at their primary participating financial institutions. Accounts displayed between separator lines 1 and 3 are registered or related to specific customers at the participating institutions, are used by the administrator according to the methods of this invention to manage the customer's participating funds. Records for these accounts are stored in this invention's databases (also referred to as the "administrator databases"). Specifically, a customer's composite account (one only) represents that customer's total funds managed by this invention, while each sub-account of a customer's (one or more) represents the portion of that customer's managed funds held in the participating financial institution associated with the sub-account, where each sub-account is associated with one participating financial institution.

Finally, accounts displayed below separator 1 are registered to the administrator (or operating entity) of an embodiment as agent for the participating customers ("administrator accounts"). These accounts are each in a bank associated with one participating financial institution, which holds the actual funds represented by the account, and are managed by the administrator according to the methods of this invention. Records for these accounts are also stored in the administrator's databases. Funds of all the customer sub-accounts associated with each participating institution are held by the administrator (as agent for the customers) in the administrator accounts in the associated or affiliated banking institution. (Where the participating institutions are banks, the bank is its own "associated" institution.) Although the present description focuses on embodiments with one or two administrator accounts per participating financial institution, in other embodiments the administrator may maintain a number of such accounts in each institution as is convenient.

Considering first the administrator accounts (below separator line 3), this invention establishes and maintains in each

participating financial institution (or its associated banking entity) an interest-earning and insured MMDA account paired with a corresponding coupled DDA, the latter without withdrawal restrictions. The MMDA and DDA of each account pair are identically registered in each participating (or associated or affiliated) bank, for example as "Administrator as Agent for the Designated Customers" (or "Operating entity name as Agent for the Designated Customers," or a name with equivalent legal effect). FIG. 1 illustrates MMDA-DDA account pairs 5, 7, and 9 held in the three separate participating financial institutions, institutions 1, 2, and 3.

As described above, participating customer deposits are invested (or held) in the MMDAs at the various participating banks where they earn interest until needed to settle customer payments. Each MMDA will usually hold participating funds for a plurality of customers (a "pooled" MMDA). When funds are withdrawn from an MMDA to settle customer payment transactions, this invention, first, generates instructions for a messenger (or other similar person or agent) to request in-person transfer of the funds from the MMDA to the coupled DDA, and second, automatically transfers the funds from the DDA. Funds may be directly deposited into the MMDAs of each account pair, or funds may be indirectly deposited into an MMDA through its coupled DDA.

Thus, for example, to withdraw funds from the pooled MMDA account of pair 9, a messenger is instructed to request financial institution 3 to transfer selected funds from that MMDA to its identically-registered, coupled DDA. Once in the DDA of pair 9, funds may be automatically (that is electronically) withdrawn as necessary. The embodiment of FIG. 1 deposits funds into MMDAs through the coupled DDAs.

Turning next to the customer-related accounts (above separator line 3), FIG. 1 indicates schematically (by "...", a notation used elsewhere in FIG. 1) a plurality of participating, original accounts owned by a plurality of N customers, which are distributed among the three financial institutions. Only two exemplary participating original accounts, original customer account 11 for customer 1 of financial institution 1 and original customer account 13 for customer N of financial institution 3, are explicitly illustrated. Where the participating institution is a bank, the original customer accounts may be configured according to various regulatory possibilities, but typically will be a demand deposit account (DDA) without withdrawal limitations that the customer uses to make payments and to receive deposits. Where the participating institution is not a bank (but is associated or affiliated with a bank at least for the purposes of this invention), the original customer accounts will be appropriate to that institution (e.g., a broker/dealer, investment advisory firm, a insurance company, or other type of financial institution offering customer accounts).

Participating funds (funds that actually participate in the methods of this invention) from each participating (original) customer account is accounted for by a single composite account, which represents total managed funds of that customer wherever the funds are currently deposited/invested. Further, each single composite account will have one or more attached sub-accounts, which represent that customer's funds actually held at the various participating (or affiliated or associated) banks. FIG. 1 (between separator lines 1 and 3) explicitly illustrates composite account 15, representing participating funds from customer account 11, and composite account 17, representing participating funds from customer account 13. Typically, all the funds in a customer's original account will participate in and be managed by this invention. Alternatively, a certain percentage or dollar amount of customer funds may be retained in the customer's original

account in the original financial institution in order to settle transactions arising between the periodic funds-allocation processing of this invention. This percentage or amount may be determined automatically based on the history of a customer's original account, or may be set by the customer, or may be otherwise determined.

Composite accounts represent both a customer's total funds participating in this invention, and also by means of sub-accounts they also represent the allocation and investment of a customer's participating funds in the MMDA-DDA pairs maintained in the participating financial institutions. In the preferred embodiments, this allocation and investment is represented by one or more sub-accounts (and stored sub-account data) that are conceptually part of each composite account. In other words, if funds of a composite account have been allocated to and invested in the MMDA-DDA pair maintained in a particular financial institution, then that composite account will have a separate sub-account representing this allocation and investment. Because a customer's funds are preferably invested in the customer's original financial institution to the extent possible, each composite account will have a sub-account (referred to as the "primary" sub-account) representing allocation and investment in the primary institution. Where a customer's funds are invested in two or more financial institutions, the composite account will have in addition to its primary sub-account one or more secondary sub-accounts representing investments in the secondary financial institutions. In all cases, the sum of all sub-account balances will equal the balance of the parent composite account.

For example, FIG. 1 illustrates that composite account 15 for client 1 includes 19 three sub-accounts: primary sub-account 21 represents customer 1's funds that are allocated 33 to MMDA-DDA pair 5 in financial institution 1; secondary sub-account 23 represents funds allocated 35 to account pair 7 in financial institution 2; and secondary sub-account 25 represents funds allocated 37 to account pair 9 in financial institution 3. Sub-account 21 is primary because financial institution 1 is customer 1's original and primary institution, while sub-accounts 23 and 25 are secondary. Customer 1 has three sub-accounts to provide deposit-insurance coverage because the composite account balance is between two and three times the deposit-insurance target amount (for example, between \$190-285K). Next, for customer N, composite account 17 includes 27 two sub-accounts: secondary sub-account 29 representing funds allocated 35 to financial institution 2; and primary sub-account 31 representing funds allocated 37 to financial institution 3. Customer 2's sub-accounts provide deposit insurance coverage for balances between the target amount and twice the target amount (for example, between \$95-190K).

This invention may assign to each participating bank a unique code that is then used to identify the primary bank to which each composite and sub-account belongs.

#### Funds Allocation Processing in the Preferred Embodiments

Using this account structure, preferred methods for allocating participating customer funds among the participating banks are now described, commencing with the rules and objectives which guide funds allocations and followed by a preferred implementation of these rules and objectives.

Participating customer funds are generally invested according to a process which implements a number of rules in order to satisfy to the extent possible the goals and objectives of this invention. These rules are generally divided into primary rules and secondary rules. It is highly preferable that any allocation of participating funds always satisfy the primary

rules. However, depending on the number of customers, the size of their participating funds, their primary banks, and so forth, no allocation of participating funds may be possible which satisfies both the primary and the secondary rules. In these situations, it is preferred that the secondary rules be satisfied to the extent possible.

In preferred embodiments, funds investment or allocation is guided by two (a first and a second) primary allocation rules and by one or more secondary allocation rules. The first primary rule, advantageous to participating customers, is to allocate a customer's participating funds among the MMDA-DDA pairs in order that the customer receives the maximum possible deposit insurance. This is achieved by never allocating a customer's participating funds so that a bank has more than the target amount when another bank is allocated less than the target amount. If the total amount of a customer's participating funds is equal to or less than a maximum insurance threshold, which is equal the target amount (or less preferably, the actual FDIC-maximum-coverage amount) times the number of participating banks, then all that customer's funds can be covered by deposit insurance. In the contrary case, where a customer's participating funds exceed the maximum insurance threshold, then one or more banks must hold more than the target amount of that customer's funds. In both cases, this first primary rule allocates funds so that the each customer's deposit insurance coverage is maximized.

The second primary rule is to allocate all participating funds so that each bank has on deposit an aggregate amount of funds equal to that bank's participating funds, whether or not the deposited funds are owned by customers of that bank. Stated differently, the total of the funds of all participating customers at a participating bank is considered herein as that bank's aggregate or total participating funds. If the funds of one or more customers must be transferred to other participating banks for insurance coverage according to the first primary rule, then according to this second primary rule an equal amount of funds should be transferred from other banks to this bank in order to maintain this bank's aggregate funds on deposit. This rule is advantageous to participating banks, especially smaller banks, because a bank's aggregate deposits can be sources of income, for example, by being available for loans.

Processing of these primary allocation rules by the methods of this invention provides participating banks with the ability to provide increased FDIC insurance over the \$100,000 coverage limits to their bank and/or brokerage customers by allocating and investing their participating customer's balances in excess of \$95,000 (or other target amount) in interest bearing deposit accounts at other banks. The bank does not lose deposits held on its balance sheet, since it receives reciprocal deposits, equal to deposits transferred out, transferred in from other banks participating in this invention. For example suppose bank A has a customer account with a balance of \$300,000. Because FDIC insurance covers only the first \$100,000 of this balance, by dividing the additional \$200,000 equally between bank B and bank C, bank A can provide this customer with full FDIC coverage. Since bank A does not want to lose the \$200,000 in deposits, the methods of this invention will transfer to bank A \$200,000 in deposits from other participating banks (perhaps, but not necessarily, banks B and C).

Because for non-bank participating institutions the original customer accounts may not be insured, this invention permits these institutions to offer deposit insurance for (some or all) of their customer accounts for the first time. Similarly, this invention provides the participating institution's affiliated or associated bank with total deposits equal to the man-

aged funds from the participating institution. Thereby both affiliated or associated institution benefit.

One preferred secondary rule aims to never transfer customer funds unless necessary to meet the first two primary rules. For example, it is preferred not to transfer funds for a customer who has less than the target amount (for example, \$95K) of funds on deposit. Also, a customer's funds that exceed the maximum insurance coverage provided by this invention (which equals the target amount times the number of participating banks) should remain in that customer's primary bank. Even though situations may arise where this rule cannot be met for all customers, a preferred allocation method will satisfy this rule for many of the participating customers.

Another preferred secondary rule is that it is preferable for customers of a bank to earn the rate of return specified by the primary bank regardless of which other participating banks hold these customers' funds. This rule may be simply satisfied by allocating the interest earned on investments in each bank's MMDA account to the customers of that bank, wherever their deposits are allocated. Since the allocation methods provide each bank with aggregate total deposits equal to the aggregate total deposits of its participating customers, the total amount of interest it pays will be the equal the amount of interest it would have paid if no participating customer funds had been transferred from the bank. By allocating this amount of interest among its customers in its normal fashion, all these customers will receive their specified and expected rate of interest. Accordingly, it is preferable for participating banks to retain interest earned on their respective MMDAs and to allocate this interest to their own customers.

Aspects of these allocation rules can be illustrated by the following example having two participating banks, Bank A and Bank B, presented in Tables 1-4. Table 1 illustrates hypothetical balances for both banks prior to the allocation processing of this invention according to which Bank A (B) has \$100M (\$50M) deposited in participating accounts and these account have \$12M (\$9M) of balances in excess of the preferred insurance-coverage target amount of \$95K.

TABLE 1

TOTAL	Bank A	Bank B
Participating deposits	\$100M	\$50M
Balances \$0-95K	\$88M	\$41M
Balances \$95-190K	\$12M	\$9M

Table 2 restates the data of Table 1 in a format identifying at each bank the source of deposits. Table 2 illustrates that before allocation processing, Bank A (B) holds deposits of only Bank A's (B's) own customers.

TABLE 2

TOTAL	Bank A	Bank B
Aggregate deposits	\$100M	\$50M
Accounts with balances \$0-95K		
Cust. of Bank A	\$88M	0
Cust. of Bank B	0	\$41M
Accounts with balances \$95-190K		
Cust. of Bank A	\$12M	0
Cust. of Bank B	0	\$9M

In order that the participating customers are fully covered by deposit insurance (the first primary rule), all account balances

over \$95K must be moved out of their primary bank to a secondary bank. Table 3 (in rows six and seven) illustrates this reallocation of \$12M (\$9M) of deposits of Bank A's (B's) customers to the MMDA in Bank B (A). Although all customers are now insured, Bank A's total aggregate deposits of \$97M are less than its total participating deposits of \$100M, and Bank B's total aggregate deposits of \$53M exceed its total participating deposits of \$50M. In other words the second primary rule is not met.

TABLE 3

TOTAL	Bank A	Bank B
Aggregate deposits	\$97M	\$53M
Accounts with balances \$0-\$95K		
Cust. of Bank A	\$88M	0
Cust. of Bank B	0	\$41M
Accounts with balances \$95-\$190K		
Cust. of Bank A	0	\$12M
Cust. of Bank B	\$9M	0

Therefore, to satisfy the second primary rule, \$3M must be transferred from Bank B to Bank A. Since no funds from accounts with balances over \$95K (all from Bank A's customers) may be transferred without some of these Bank A customers losing insurance coverage, \$3M in funds from accounts with deposits less than \$95K (all from Bank B's customers) must be transferred. Table 4 (in row 4) illustrates the final allocation meeting both primary rules.

TABLE 4

TOTAL	Bank A	Bank B
Aggregate deposits	\$100M	\$50M
Accounts with balances \$0-\$95K		
Cust. of Bank A	\$88M	0
Cust. of Bank B	\$3M	\$38M
Accounts with balances \$95-\$190K		
Cust. of Bank A	0	\$12M
Cust. of Bank B	\$9M	0

In this example the secondary rule is violated. Certain customers of Bank B whose accounts have a balance less than \$95K must have funds transferred from their primary bank even though this is not preferred. Due to a greater need for increased deposit insurance coverage by Bank A, certain Bank B customers that do not require increased deposit insurance have had their accounts transferred to Bank A in order to meet the two primary objectives.

Now the preferred processes implementing these rules and objectives will be described. Generally, these processes perform funds allocation in a manner that sufficiently approximates an exact solution to the rule-constrained funds allocation problem; preferably, the funds allocation satisfies exactly the allocation rules. The allocation process is usually performed on a regular basis with a frequency determined by characteristics of the participating customers and financial institutions. In the case of retail customers of banks and similar institutions, allocation processing is preferably performed on a daily or twice-daily basis during the business week. In situations where customer transactions are relatively infrequent, processing may be performed weekly or monthly. In other situations where typical customer transactions are com-

parable to the size of the target amount, then more frequent, even transaction-by-transaction processing, processing may be advantageous.

FIG. 2 illustrates in outline a preferred embodiment of regular processing, however frequently performed. After regular processing is triggered and commences 51, its first activities are to receive transaction data for customer transactions that have occurred since that last regular processing 53. These transactions will in most cases require funds re-allocation because customer balances are changed. Transactions may be received from the participating financial institutions, usually in batches such as transaction files. Alternatively, transaction may be received directly by the methods and system of this invention from external transaction sources, such as payment and funds transfer networks, and stored in batches or files for later processing. Once transaction batches or files have been received for all participating customers, they are initially processed 55 and applied to customer composite accounts stored in system databases.

Steps 57 and 59 are the heart of the regular funds allocation process. Step 57 first posts all received customer transactions to customer composite accounts, and then allocates the posted transactions to customer sub-accounts in a manner that provides full deposit-insurance coverage (or a maximum of coverage if full coverage is not possible). After step 57, although the first primary rule is satisfied, the second primary rule may not be satisfied: one or more individual participating institutions may have total aggregate deposits that are more or less than the participating deposits of the own customers (referred to as "out of balance"). Accordingly, step 59 reallocates funds in customer sub-accounts among the participating institutions to insure that the institutions are brought into balance. After transaction allocation processing of step 57 and sub-account re-allocation processing of step 59, instructions are generated 60 and transmitted to cause transaction settlement and funds transfer between participating institutions. Regular processing terminates at step 61.

In alternative embodiments, the principal steps, receiving transaction data, allocating transactions, and re-allocating sub-account funds, may be performed in different orders. For example, if the participating institutions may tolerate being out of balance to a certain degree, then receiving transaction data and allocating transactions may be repeatedly performed 63 in a regular fashion as above while sub-account-fund re-allocation is performed only when the out of balance condition exceeds the tolerable degree.

Next, these individual processing steps illustrated in FIG. 2 will be described in more detail with reference to FIGS. 3, 4, and 5. First, FIG. 3 illustrates file processing step 55 in more detail. This processing commences at step 71, and directly tests 75 for further transaction files 73 to process. If all received transaction files have already been processed, file processing exits 77. Otherwise, file processing tests 79 whether the input data relates to the opening (or availability) of a new participating customer account. If so, the appropriate data structures necessary to manage this account are opened and initialized 81 in the invention's databases. The new data structures include, at least, a new composite customer account and at least one primary sub-account. Secondary sub-accounts may also be opened and initialized at this time if desired. Also, if the new account indication has been received directly by the administrator, it may be necessary to open directly or indirectly a new customer account with the primary financial institution. Otherwise, if the input data relates to daily customer transactions, then these transaction are applied 83 to the customer composite accounts stored in the invention's databases. Transaction are applied or posted in

a standard manner as known in the art by recording transaction details in appropriate ledgers along with current balance updates.

After received transactions are applied 55 (FIG. 2) to composite accounts stored in the administrator database, they are allocated and posted to 57 the customer sub-accounts, the balances of which indicate the amount of a customer's funds in each participating institution. FIG. 4 illustrates transaction allocation processing in more detail. After this processing commences at 91, it tests for another unprocessed composite account 95 present in administrator database 93 and processes it if one is present; otherwise transaction allocation processing exits 97. All composite accounts in the administrator database are thereby processed. As illustrated, preferred allocation processing is generally divided into two parts, a first part which processes deposit transactions (or other types of transactions that increase customer composite account balances) 115 followed by a second part which processes withdrawal transactions (or other types of transactions that decrease customer composite account balances) 117. In alternative embodiments the processing order of deposit and withdrawal transactions may be reversed; further, the processing of deposit and withdrawal transactions may be interleaved in the order in which they are retrieved from the composite account.

Deposit transaction processing 115 generally seeks to add new deposits to a customer's primary sub-account in the customer's primary institution if consistent with maximum deposit insurance. Otherwise, new deposits are added to secondary sub-accounts to achieve maximum deposit insurance. Therefore, the existing balance in a customer's composite account (or in the customer's primary sub-account) is tested 99. If the existing balance plus the new deposit will not exceed the target coverage amount, then processing branches to the left at test 99, and the new deposit may be allocated 103 to the customer's primary sub-account. On the other hand, if the existing balance in the primary sub-account plus new deposit exceeds the target coverage amount, processing proceeds to test 101, where the customer's secondary sub-accounts are tested to determine if there is at least one secondary sub-account with an existing balance so that after adding the new deposit to the existing balance the sub-account will remain within the target amount. If there is at least one such secondary sub-account, processing branches at test 101 to the right, and the new deposit is allocated 107 to that sub-account. Also, this right-hand branch is taken where, although all existing secondary sub-accounts are too near the target amount, there exists another secondary institution not yet having a secondary sub-account for this customer. Then, a new secondary sub-account may be opened 105 in that secondary institution and the new deposit may be allocated 107 to that new sub-account.

Further, it may happen that a customer has secondary sub-accounts at all secondary institutions none of which are capable of receiving the new deposit without exceeding the target coverage amount. In this case, in those embodiments where it is preferred to retain a customer's deposits in the customer's primary institution, the left-hand branch from test 101 is taken, and the new deposit is allocated 103 to the primary sub-account. On the other hand, in those embodiments where it is preferred to distribute a customer's excess balance (over the target amount) times the number of participating financial institutions) among the secondary institutions (or banks) to reduce risk, processing will branch from test 101 to allocate the new deposit to that secondary sub-

account 107 having the smallest existing balance or to the primary sub-account 103 if that account has the smallest current balance.

Withdrawal transaction processing 117, conversely to deposit processing, generally seeks to remove funds from a customer's secondary financial institutions so that the customer's primary institution holds the most customer funds consistent with maximum deposit insurance coverage. Accordingly, withdrawal processing tests 109 if the customer has any secondary sub-accounts with balances sufficient to satisfy the new withdrawal transaction. If so, processing branches to the right at test 109, and the withdrawal is posted 113 to that secondary sub-account. Where even distribution of a customer's excess balance evenly among the secondary institutions (or banks) is preferred, new withdrawals may be allocated to the secondary sub-account with the largest balance. Further, if no single sub-account has a sufficient existing balance to cover a new withdrawal, as much as possible of the withdrawal may be covered from two or more (or all) sub-accounts. In this case, one or more (or all) sub-accounts may have be left with zero balances. If the withdrawal cannot be satisfied by reducing all sub-accounts to zero balance, the remainder can be covered by branching to the left and withdrawing funds 111 from the primary account.

Finally, it is often advantageous to split both deposit and withdrawal transactions among sub-accounts, allocating part of a transaction amount to one sub-account and part to another sub-account. For example, this may be guided in order to achieve a better distribution of a customer's excess balances among the secondary sub-accounts or to maximize funds (preferably within the target amount) in the customer's primary sub-account.

Generally, although transaction allocation as described achieves the deposit-insurance-coverage objectives of this invention, it may leave the participating banks or financial institutions out of balance. The second primary objective is that each participating bank be in balance, that is where with the total aggregate of the deposits allocated to each bank equals the total participating deposits of the customers of that bank. The total deposits allocated to a bank equals the sum of the balances of all sub-accounts allocated to and held by that bank, whether or not the sub-accounts are associated with customers of that bank; the bank's total participating funds equals the sum of the balances of the composite accounts of all the customers of that bank. It is convenient in the following to use the term "net\_difference" to stand for the difference of these two sums, namely, the sum of the composite account balances subtracted from the sum of the balances of the allocated sub-account balances. Then a bank is said to be in surplus if its net\_difference is positive; a bank is in balance if its net\_difference is substantially zero; and a bank is in deficit if its net\_difference is negative.

The following example, including three banks, Bank A, Bank B, and Bank C and presented in Tables 5-7, illustrates that the results of transaction allocation may lead to need for funds re-allocation. First, Table 5 illustrates exemplary results of a just-completed transaction allocation for the present processing period. (Parenthesis enclosing an amount indicates that the amount is negative.) Here, Bank A started with \$100M in aggregate total deposits as of the end of the previous regular processing. Bank A's transaction file for the current processing day is equal to \$8M. Therefore, it has increased its aggregate deposit balances by \$8M. The transaction allocation for the present processing period leads to a net of \$8M in new deposits allocated to all the sub-accounts held at Bank A. Of this \$8M of new net deposits, customers of Bank A have generated a net of \$8M of new deposits; cus-

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tomers of Bank B have generated \$2M of net withdrawals; and customers of Bank C have generated \$2M of new deposits. These nets are consistent because  $\$8M = \$8M - \$2M + \$2M$ . Therefore, Bank A's net difference is zero. The data for Banks B and C are similarly interpreted. Note that the transactions allocated and posted to the sub-accounts held at a specific bank may or may not be in the transaction file sent by that bank, since not all sub-accounts held at the bank are for customers of the bank.

TABLE 5

	BANK		
	A	B	C
Bank deposits as of the previous day	\$100M	\$50M	\$30M
Net transactions allocated to bank from all received transaction files	\$8M	\$6M	\$3M
Breakdown of net transactions by customers of bank	A = \$8M; B = (\$2M); C = \$2M	A = (\$2M); B = \$6M; C = \$2M	A = \$2M; B = (\$1M); C = \$2M

Next, Table 6 presents that same data as Table 5 organized by the customers of each bank instead of by bank.

TABLE 6

Customers of BANK	Total net transactions of bank	Net transactions in sub-accounts allocated to BANK		
	customers	A	B	C
A	\$8 M	\$8M	(\$2M)	\$2M
B	\$3 M	(\$2M)	\$6M	(\$1M)
C	\$6 M	\$2M	\$2M	\$2M
Total net transactions for sub-accounts allocated to this bank		\$8M	\$6M	\$3M

For example, customers of Bank B have generated a net deposit of \$3M, which results in an increase of the sum of their composite accounts by this amount. This net represents \$2M of net withdrawals from Bank-B's secondary sub-accounts that are held at Bank A, \$6M of net deposits in Bank-B's primary sub-accounts held at Bank B, and \$1M of net withdrawals from Bank-B's secondary sub-accounts that are held at Bank C. Again, these nets are consistent because  $\$3M = -\$2M + \$6M - \$1M$ . The data for customers of Banks A and C are similarly interpreted.

Finally, Table 7 illustrates determination of the surplus/deficit status of the participating bank and the funds re-allocation needed (assuming the banks were all initially in balance). For example, Bank C has experienced a \$3M increase in aggregate participating deposits, because \$3M in customer transactions were allocated to it as indicated in Table 5. However, Table 6 indicates that the customers of Bank C generated \$6M in net deposits. Therefore, Bank C has a negative net difference, or deficit, of \$3M; \$3M needs to be transferred into Bank C from Banks A and B so that its aggregate deposits equals the aggregate deposits of its customers. Similar interpretation of the results for Banks A and B indicate that Bank A remains in balance while Bank B has a positive net difference, or surplus, of \$3M. All the banks will be in balance again after a funds transfer of \$3M from Bank B to Bank C.

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TABLE 7

BANK	A	B	C
Aggregate bank deposits on previous day	\$100M	\$50M	\$30M
Change in sub-accounts attached to the bank at end of this day (= net transactions allocated to this bank)	\$8M	\$6M	\$3M
Change in aggregate deposits of all customers of this bank (= net transactions of all customers of this bank)	\$8M	\$3M	\$6M
Status (net difference)	Balanced	Surplus of \$3M	Deficit of \$3M
Re-allocation needed	\$0	(\$3M)	\$3M

In summary, funds re-allocation is usually needed because the net transaction balances allocated to a bank usually does not equal the net transaction balances of the bank's customers (or customers of its affiliated or associated participating financial institution).

Now returning to this invention's processing methods, FIG. 5 illustrates funds re-allocation processing, step 59 (FIG. 2), in more detail in view of the prior example. After commencing 131, classification step 135 retrieves data from administrator databases 133, which store composite account and sub-account records, and classifies all participating financial institutions (for example, participating banks) as being in surplus, in balance, or in deficit according to the net difference definition above. This classification is processed in a fashion analogous to the exemplary classification of Banks A, B, and C in the prior example. After surplus/balance/deficit classification 135, re-allocation processing determines 137 if there are any institutions in surplus. Processing exits 139 if no further institutions are in surplus, because if there are no institutions in surplus, then all institutions are in balance. Any institution that is in deficit means that there are one or more other institutions in surplus, and conversely. (Similarly, processing may determine if there are any institutions in deficit.) However, if at least one institutions is still in surplus (and thus one or more are still in deficit), re-allocation processing must continue.

Re-allocation processing seeks to transfer sub-account balances from surplus institutions to deficit institutions until all are in balance. Secondary sub-accounts are preferentially transferred out of a surplus institution to a deficit institution; however, if transfer of all secondary sub-accounts does not achieve balance, then primary sub-accounts, that is sub-accounts for customers of the surplus institution, are also transferred. Therefore, processing next finds 141 secondary sub-accounts at a surplus institution (which it should be recalled are sub-accounts for individuals who are not customers of that surplus institution). Certain secondary sub-accounts are "fixed," and may not be transferred to an in-deficit institution. For example, a candidate secondary sub-account may not be transferred if transfer of part or all of its current balance will decrease insurance coverage for that sub-account's owner. This will occur, for example, if the existing balances of that customer's sub-accounts at the currently in-deficit institutions are too close to (or are at) the target amount, and cannot accommodate funds from the candidate secondary sub-account. Test 143 bypasses all such "fixed" sub-accounts.

Having found a sub-account eligible for transfer, all of part is transferred 145 to an in-deficit institution. If the current in-surplus institution may be balanced by transfer of only a part of the eligible sub-account, the necessary part is transferred leaving the institution now in balance. Otherwise, the entire sub-account is transferred. Alternatively, as much as



possible of the sub-account is transferred without causing a decrease in that customer's insurance coverage. If the current in-surplus institution is now in balance 147, re-allocation processing checks again 137 for another in-surplus institution. However, if transfer of all possible funds from secondary sub-accounts does not balance the current in-surplus institution, then funds will be transferred from one or more primary sub-accounts. Primary sub-accounts are selected and processed for transfer 149 in a fashion analogous to that for secondary sub-accounts. However, transfers that will decrease insurance coverage for the account's owner are not allowed.

Transfers of funds preferably are determined to leave the financial institutions exactly in balance with a net difference of zero. However, in certain embodiments it may not be possible to exactly balance institutions because of, for example, funds transfer restrictions, timing differences between transaction processing and funds transfer, and the like. In such embodiments, financial institutions should be substantially in balance by having the net difference to be no more than 5%, or 2%, or 1%, or 0.5%, or 0.1% of the total customer account balances.

Additionally, the methods of this invention preferably generate customer statements that display the customer transaction activity posted to the composite account along with the customer's balances (in sub-accounts) held at each participating financial institution or bank. These statements are usually generated monthly.

#### Systems Preferred for this Invention

FIG. 6 generally illustrates exemplary administrator systems of this invention, which, along with certain external system with which the administrator systems cooperate, are for performing the above-described methods of this invention. Computer system 201, including processing unit, memory, communication interface, user interfaces, and the like, is configured with a performance and reliability acceptable for financial processing as is known in the arts. For example, such computers along with industrial-strength operating software are available from IBM and other well known manufacturers. Administrator systems also include database storage 202, preferably highly reliable, for storing account data, including composite account data, sub-account data, MMDA-DDA account-pair data, and such other administrative data needed for customer funds management.

The methods of this system are programmed, preferably in a suitable, commercial or financial programming language, and translated into machine instructions which cause computer 201 and its operating software and database 202 to perform this invention's methods. This invention also includes program products comprising computer readable media containing encoded representations of such machine instructions. Such computer readable media are well known in the art (and include network distribution).

In order to perform this invention's methods, the administrator systems are preferably in communication with external systems which provide important data, such as sources 204 of customer transaction data. This invention includes processing, posting, and allocation of various types of customer transactions, for example, ACH credit/debit transactions, debit and credit card transactions, sweep transaction from participating financial institutions, check/draft payments and deposits, FED wire transfers, and transactions originating over the telephone, the internet, in person, and so forth. Generally, as known in the art, different transaction types origi-

nate from different external systems, and may arrive transaction-by-transaction or may be batched into periodic (e.g., daily) transaction files.

In most embodiments, the administrator systems are in communication with external systems 203 of the participating financial institutions. For participating banking institutions, both customer account information and MMDA-DDA account-pair information may be exchanged with their external systems 203. For other types of participating financial institutions, primarily customer account information is exchanged, while related MMDA-DDA account-pair information is exchanged with the systems of that institutions affiliated or associated bank. In certain embodiments, one or more of the participating financial institutions may directly receive customer transactions and then exchange them with the administrator systems as a batch file. Accordingly, communications between the administrator systems, the transaction source systems, and the participating financial institution systems may be direct or indirect.

Finally, communication links 205a and 205b between these systems may be of the many types known in the art. They may be private links that are used only for the purposes of this invention. Alternatively, these links may be shared as part of private clearing house networks, of bank card networks, of Federal Reserve Board networks, and the like. As also known in the art. These links may be configured as point-to-point links, or a networks, or a networks of networks, such as the Internet.

The invention described and claimed herein is not to be limited in scope by the preferred embodiments herein disclosed, since these embodiments are intended as illustrations of several aspects of the invention. Any equivalent embodiments are intended to be within the scope of this invention. Indeed, various modifications of the invention in addition to those shown and described herein will become apparent to those skilled in the art from the foregoing description. Such modifications are also intended to fall within the scope of the appended claims.

A number of references are cited herein, the entire disclosures of which are incorporated herein, in their entirety, by reference for all purposes. Further, none of these references, regardless of how characterized above, is admitted as prior to the invention of the subject matter claimed herein.

#### What is claimed is:

1. A method for managing funds for a plurality of primary customers of a first financial institution that are participating in a program whose funds were accepted for deposit in respective primary customer accounts held in the respective names of the respective primary customers at the first financial institution, comprising:

- (a) maintaining one or more FDIC-insured and interest-bearing aggregated deposit accounts at the first financial institution;
- (b) maintaining one or more FDIC-insured and interest-bearing aggregated deposit accounts at each of one or more different financial institutions;
- (c) maintaining or having maintained or accessing by one or more computers an electronic database, on one or more computer-readable media, comprising information on a balance of funds held by each respective primary customer of the first financial institution in the respective primary customer account in the first financial institution and an amount of such funds held in the one or more aggregated deposit accounts in the first financial institution and an amount or respective amounts of such funds held in the one or more different financial institutions;

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- (d) receiving electronic client transaction data describing debit and/or credit transactions made by a plurality of the primary customers against their respective primary customer accounts;
  - (e) determining or having determined or receiving electronically for each of the plurality of the primary customer accounts of the first financial institution an updated balance of funds in the respective primary customer account resulting from one or more debit and/or credit transactions associated with the respective primary customer received in the electronic client transaction data;
  - (f) determining by one or more computers, for each of a plurality of the respective primary customer accounts of the first financial institution, a respective excess amount relative to a specified amount;
  - (g) allocating a respective excess amount associated with each of a plurality of respective primary customer accounts of the first financial institution to one or more of the aggregated deposit accounts in a different one or more of the financial institutions;
  - (h) determining by one or more computers a first amount of funds comprised of funds associated with a plurality of the respective primary customers of the first financial institution allocated or to be allocated to one or more of the aggregated deposit accounts in the different one or more of the financial institutions, wherein the first amount of funds at least approximates a total of the respective excess amounts determined for the respective primary customer accounts of the plurality of the primary customers of the first financial institution;
  - (i) determining by one or more computers a second amount of funds comprising funds associated with one or more primary customer accounts of one or more of the other financial institutions from one or more of the aggregated deposit accounts in one or more of the other financial institutions, with the second amount to be transferred to the first financial institution, with the second amount of funds being based on the first amount of funds;
  - (j) allocating funds associated with the second amount from the one or more primary customer accounts of the one or more of the other financial institutions to the one or more aggregated accounts of the first financial institution;
  - (k) updating or having updated in the electronic database the balance of funds held by respective primary customers of the first financial institution in their respective primary customer accounts and the amount of such funds held in the one or more aggregated deposit accounts in the first financial institution and the amount or amounts of such funds held in one or more aggregated deposit accounts held in the one or more of the different financial institutions based on the allocating steps; and
  - (l) generating and outputting at least one instruction to transfer funds between aggregated deposit accounts based at least in part on results of one or more of the allocating steps.
2. The method as defined in claim 1, wherein the second amount allocated is equal to the first amount.
  3. The method as defined in claim 1, wherein the second amount is greater than the first amount.
  4. The method as defined in claim 1, wherein the second amount is less than the first amount.
  5. The method as defined in claim 1, further comprising: receiving via an electronic communication at least one transaction from an external system, wherein the external system is for ACH credit/debit transactions, or for

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- debit and credit card transactions, or for sweep transactions from financial institutions, or for check/draft payments and deposits, or FED wire transfers, or for transactions originating over the telephone, or the internet for one of the primary customers of the first financial institution who also has funds in one of more of the aggregated deposit accounts in one or more of the other financial institutions; and
  - issuing at least one instruction to transfer funds in accordance with the at least one transaction; and
  - reallocating an amount of funds from one or more of the aggregated deposit accounts at the different financial institutions to the at least one aggregated deposit account in the first financial institution to maximize funds of the one primary customer held in the first financial institution but with the balance of those funds in the first financial institution remaining equal to or less than the specified amount.
6. The method as defined in claim 1, further comprising: receiving via an electronic communication at least one transaction from an external system, wherein the external system is for ACH credit/debit transactions, or for debit and credit card transactions, or for sweep transactions from financial institutions, or for check/draft payments and deposits, or FED wire transfers, or for transactions originating over the telephone, or the internet for one of the primary customers of the first financial institution who also has funds in one or more of the aggregated deposit accounts in one or more of the other financial institutions; selecting one of the aggregated deposit accounts holding funds of the one customer in one of the different financial institutions; and reallocating an amount of funds from the selected aggregated deposit account at the one different financial institution for the at least one transaction.
  7. The method as defined in claim 1, further comprising: transferring or having transferred funds between aggregated deposit accounts based at least in part on results of one or more of the allocating steps.
  8. The method as defined in claim 1, further comprising adding new deposits from a primary customer of the first financial institution to one of more of the aggregated deposit accounts in the first financial institution, unless an amount of funds held by the primary customer in the program in the first financial institution equals or exceeds the specified amount.
  9. The method as defined in claim 1, further comprising: performing the allocation of the second amount only if one or more allocations of first amounts equals or exceeds a threshold amount.
  10. The method as defined in claim 1, wherein the determining an excess amount step comprises determining an excess amount by which a balance of funds in the respective primary customer account exceeds the specified amount.
  11. The method as defined in claim 1, wherein the determining an excess amount step comprises determining an excess amount by which an amount of funds of the respective primary customer account held in the first financial institution exceed the specified amount.
  12. A method for managing funds, in a plurality of financial institutions participating in a program, for a plurality of primary customer accounts of a plurality of primary customers, with each respective primary customer having funds that were accepted for deposit in a primary customer account in the name of the primary customer at one of the plurality of

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financial institutions in the program, with that financial institution referred to as a primary financial institution for that primary customer, comprising:

- (a) maintaining a plurality of FDIC-insured and interest-bearing aggregated deposit accounts, with one or more of the aggregated deposit accounts held in each different one of the financial institutions;
- (b) maintaining or having maintained or accessing by one or more computers an electronic database, on one or more computer-readable media, comprising information on a balance of funds held by each respective primary customer in the respective primary customer account and an amount or respective amounts of such funds held in one or more of the plurality of aggregated deposit accounts in the plurality of financial institutions;
- (c) receiving electronic client transaction data describing debit and/or credit transactions made by the primary customers against their respective primary customer accounts;
- (d) determining or having determined or receiving electronically for each primary customer account an updated balance of funds in the primary customer account resulting from the debit and/or credit transactions associated with the respective primary customer received in the electronic client transaction data;
- (e) determining by one or more computers, for each of a plurality of respective primary customer accounts, a respective excess amount by which a balance of funds in that primary customer account in its respective primary financial institution exceeds a specified amount;
- (f) allocating a respective excess amount associated with each of a plurality of the one or more respective primary customer accounts of the first financial institution to one or more of the aggregated deposit accounts in a different one or more of the financial institutions;
- (g) determining by one or more computers from a plurality of the excess amounts determined from a plurality of primary customer accounts in one of the financial institutions that were or are to be allocated to one or more of the aggregated deposit accounts in one or more of the other financial institutions a first amount;
- (h) allocating by one or more computers to the one financial institution a second amount of funds comprising funds associated with one or more primary customer accounts of one or more of the other financial institutions from one or more of the aggregated deposit accounts at one or more of the other financial institutions, with the second amount based on a difference between a sum of funds deposited in the one or more aggregated deposit accounts of the one financial institution associated with the program and a sum of current balances in all of the primary customer accounts of the primary customers in the program associated with the one financial institution;
- (i) updating or having updated in the electronic database the balance of funds held by each respective primary customer in the respective primary customer account and an amount or respective amounts of such funds held in one or more of the plurality of aggregated deposit accounts in the plurality of financial institutions based on the allocating steps; and
- (j) generating and outputting at least one instruction to transfer funds between aggregated deposit accounts based at least in part on results of one or more of the allocating steps.

13. The method as defined in claim 12, wherein the second amount allocated is equal to the difference between the sum

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of current balances in all of the primary customer accounts associated with the first financial institution in the program and funds deposited in the one or more aggregated deposit accounts of the primary financial institution.

14. The method as defined in claim 12, further comprising: receiving via an electronic communication at least one transaction from an external system, wherein the external system is for ACH credit/debit transactions, or for debit and credit card transactions, or for sweep transactions from financial institutions, or for check/draft payments and deposits, or FED wire transfers, or for transactions originating over the telephone, or the internet for one of the primary customers of one of the financial institutions who also has funds in one or more of the aggregated deposit accounts in one or more of the other financial institutions; and

issuing at least one instruction to transfer funds in accordance with the at least one transaction; and reallocating an amount of funds from one or more of the aggregated deposit accounts at the different financial institutions to the at least one aggregated deposit account in the one financial institution to maximize funds of the one primary customer held in the one financial institution but with the balance of those funds in the one financial institution remaining equal to or less than the specified amount.

15. The method as defined in claim 12, further comprising: receiving via an electronic communication at least one transaction from an external system, wherein the external system is for ACH credit/debit transactions, or for debit and credit card transactions, or for sweep transactions from financial institutions, or for check/draft payments and deposits, or FED wire transfers, or for transactions originating over the telephone, or the internet for one of the primary customers of one of the financial institutions who also has funds in one or more of the aggregated deposit accounts in one or more of the other financial institutions;

selecting one of the aggregated deposit accounts in one of the other financial institutions holding funds of the one customer; and

reallocating an amount of funds from the selected aggregated deposit account at the one different financial institutions for the at least one transaction to the at least one aggregated deposit account in the one financial institution.

16. The method as defined in claim 12, further comprising: transferring or having transferred funds between the financial institutions based at least in part on results of one or more of the allocating steps.

17. The method as defined in claim 12, further comprising: performing the allocation of the second amount only after the difference equals or exceeds a threshold amount.

18. The method as defined in claim 12, further comprising: selecting one of the financial institutions based at least in part on an amount of the difference between a sum of the funds deposited in the one or more aggregated deposit accounts of the one financial institution associated with the program and a sum of current balances in all of the primary customer accounts of the primary customers in the program associated with the one financial institution; and

issuing at least one instruction to transfer funds to the selected one of the financial institutions.

\* \* \* \* \*

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF GEORGIA**

Case No. 09-CV-03079-JEC

ISLAND INTELLECTUAL PROPERTY LLC  
and INTRASWEEP LLC,

Plaintiffs,

vs.

INSTITUTIONAL DEPOSITS CORP.,

Defendant.

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**ANSWER OF DEFENDANT INSTITUTIONAL DEPOSITS CORP. TO  
COMPLAINT FOR PATENT INFRINGEMENT**

Defendant Institutional Deposits Corp. ("IDC") hereby files this Answer to Plaintiffs Island Intellectual Property LLC and Intrasweep LLC's (collectively, "Plaintiffs") Complaint for Patent Infringement.

**PLAINTIFFS' GENERAL ALLEGATIONS**

1. IDC admits that the Complaint purports to seek relief for infringement of U.S. Patent No. 7,536,350 (the "'350 Patent"). However, IDC denies that the claim is properly stated. IDC lacks knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations of paragraph 1 of the Complaint and therefore denies such allegations.

2. IDC admits that the copy of the '350 Patent attached to the Complaint as Exhibit A reflects an issue date of May 19, 2009 and is entitled "Systems and Methods for Providing Enhanced Account Management Services for Multiple Banks." IDC admits that the Complaint purports to assert a claim against IDC for patent infringement based on Claims 12 through 16 of the '350 Patent. However, IDC denies that the claim is properly stated. IDC also denies the allegation of paragraph 2 of the Complaint that IDC has infringed the '350 Patent.

3. IDC admits that a true and correct copy of the '350 Patent is attached to the Complaint as Exhibit A.

4. IDC lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations of paragraph 4 of the Complaint and therefore denies such allegations.

5. IDC lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations of paragraph 5 of the Complaint and therefore denies such allegations.

6. IDC admits that it is a corporation organized and existing under the laws of the State of Florida with its principal place of business and corporate headquarters located in Miami, Florida. IDC admits that it has a sales office located in Acworth, Georgia.

7. IDC admits the allegations of paragraph 7 of the Complaint.
8. IDC admits the allegations of paragraph 8 of the Complaint.
9. IDC admits that it maintains a sales office located in Acworth, Georgia and that it is subject to the Court's personal jurisdiction, but denies the remaining allegations of paragraph 9 of the Complaint.
10. IDC admits that venue is permissible in this judicial district under 28 U.S.C. §§ 1391(b)-(c) and 1400(b), but states that for the convenience of the parties and witnesses, and in the interests of justice, venue in this judicial district is not appropriate pursuant to 28 U.S.C. § 1404(a).
11. IDC denies the allegations of paragraph 11 of the Complaint.
12. IDC lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations of paragraph 12 of the Complaint and therefore denies such allegations.
13. IDC lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations of paragraph 13 of the Complaint and therefore denies such allegations.
14. IDC lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations of paragraph 14 of the Complaint and therefore denies such allegations.

15. IDC lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations of paragraph 15 of the Complaint and therefore denies such allegations.

16. IDC denies the allegations of paragraph 16 of the Complaint.

17. IDC admits that the '350 Patent identifies Island Intellectual Property LLC as the assignee. IDC lacks knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations of paragraph 17 of the Complaint and therefore denies such allegations.

18. IDC lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations of paragraph 18 of the Complaint and therefore denies such allegations.

19. IDC admits that it created a program known as MMAX and that it offers MMAX within the United States. IDC admits that it offers MMAX without the authorization of Plaintiffs, but denies that any authorization from Plaintiffs is necessary.

20. Based on its understanding that the terms used in paragraph 20 of the Complaint are intended by Plaintiffs to refer to claim terms used in the '350 Patent, IDC denies the allegations of paragraph 20 of the Complaint.

21. IDC lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations of paragraph 21 of the Complaint and therefore denies such allegations.

22. IDC admits that MMAX allows banks to offer additional FDIC insurance coverage to their customers. IDC denies that it provides banks themselves with extended FDIC insurance coverage.

23. IDC denies the allegations of paragraph 23 of the Complaint.

24. IDC denies the allegations of paragraph 24 of the Complaint.

25. IDC denies the allegations of paragraph 25 of the Complaint.

26. IDC denies the allegations of paragraph 26 of the Complaint.

**COUNT ONE**

27. IDC repeats and realleges each and all of the responses contained in paragraphs 1 through 26 above as though those responses were set forth in full herein.

28. IDC denies the allegations of paragraph 28 of the Complaint.

29. IDC denies the allegations of paragraph 29 of the Complaint.

30. IDC denies the allegations of paragraph 30 of the Complaint.

31. IDC denies the allegations of paragraph 31 of the Complaint.



32. Unless specifically admitted above, IDC denies each and every allegation of the Complaint.

**AFFIRMATIVE AND OTHER DEFENSES**

33. IDC does not infringe, and has not infringed, the '350 Patent.

34. By reason of statements made by or on behalf of the patent applicant during the prosecution of the '350 Patent and/or related patent applications, Plaintiffs are estopped from seeking any construction of the patent that would cover IDC's products or services at issue in this lawsuit.

35. The '350 Patent is invalid under 35 U.S.C. § 100 et seq., including without limitation 35 U.S.C. § 101, § 102, § 103 and/or § 112.

36. Plaintiffs are misusing the '350 Patent in a manner to gain an unfair commercial advantage and extend the patent beyond the scope of its claims.

37. Plaintiffs are precluded from recovering damages and from seeking injunctive or other types of relief by reasons of estoppel, laches, unclean hands and/or waiver.

**PRAYER FOR RELIEF**

WHEREFORE, Defendant IDC prays:

- A. That Plaintiffs take nothing by way of the Complaint;
- B. That the Court find that IDC has not infringed the '350 Patent;

- C. That the Court find the '350 Patent to be invalid;
- D. That this case be deemed exceptional pursuant to 35 U.S.C. § 285 and that IDC be awarded its attorneys' fees;
- E. That IDC be awarded its expenses, costs and disbursements; and
- F. That IDC be awarded such other and further relief as the Court deems just and proper.

**JURY DEMAND**

Defendant Institutional Deposits Corp. demands trial by jury on all issues so triable.

DATED this December 10, 2009.

Respectfully Submitted,

TERRY D. JACKSON, P.C.

/s/Terry D. Jackson

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**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF GEORGIA**

Case No. 09-CV-03079-JEC

ISLAND INTELLECTUAL PROPERTY LLC  
and INTRASWEEP LLC,

Plaintiffs,

vs.

INSTITUTIONAL DEPOSITS CORP.,

Defendant.

\_\_\_\_\_ /

**CERTIFICATE OF SERVICE**

I hereby certify that the foregoing ANSWER OF DEFENDANT INSTITUTIONAL DEPOSITS CORP. TO COMPLAINT FOR PATENT INFRINGEMENT was electronically filed with the Clerk of Court using the CM/ECF System which will automatically send email notification of such filing sufficient to constitute service to the following attorneys of record:

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Island Intellectual Property LLC  
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DATED this December 10, 2009.

/s/Terry D. Jackson  
Attorney for Defendant

USDC SDNY  
DOCUMENT  
ELECTRONICALLY FILED  
DOC#

DATE FILED: 11/19/09

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

----- x  
ISLAND INTELLECTUAL PROPERTY LLC,  
LIDS CAPITAL LLC, DOUBLE ROCK  
CORPORATION, and INTRASWEEP LLC,

Plaintiffs,

v.

DEUTSCHE BANK AG, DEUTSCHE BANK  
TRUST COMPANY AMERICAS, and TOTAL  
BANK SOLUTIONS, LLC,

Defendants.  
----- x

Civil Action No.: 09 Civ. 2675 (VM) (AJP)

*P. J. LVC*  
**STIPULATED DISMISSAL OF**  
**DEUTSCHE BANK AG**  
**WITHOUT PREJUDICE**

Whereas counsel for Defendants Deutsche Bank AG and Deutsche Bank Trust Company Americas represents that Defendant Deutsche Bank AG is not involved in the offering and/or operation of the Deutsche Bank Insured Deposit Program;

IT IS HEREBY STIPULATED AND AGREED THAT:

- (1) Pursuant to Rule 41(a)(1)(A)(ii) of the Federal Rules of Civil Procedure, Deutsche Bank AG is hereby dismissed on consent and without prejudice from the above action;
- (2) Plaintiffs and Defendant Deutsche Bank AG will each bear their own fees and costs in this action with respect to the cause of actions asserted by and against Deutsche Bank AG; and
- (3) Deutsche Bank AG shall be removed from the case caption.

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*Counsel for Plaintiffs Island Intellectual  
Property LLC, LIDs Capital LLC, Double  
Rock Corporation and Intrasweep LLC*

**IT IS SO ORDERED.**

Dated: New York, New York  
11/19, 2009

HON. ANDREW J. PECK  
United States Magistrate Judge  
Southern District of New York  
Hon. Victor Marrero  
United States District Judge

ANDREW J. PECK  
United States Magistrate Judge  
Southern District of New York

**BY ECF**

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

ISLAND INTELLECTUAL PROPERTY  
LLC, LIDS CAPITAL LLC, DOUBLE ROCK  
CORPORATION, and INTRASWEEP LLC,

Plaintiffs,

v.

DEUTSCHE BANK TRUST COMPANY  
AMERICAS and TOTAL BANK  
SOLUTIONS, LLC,

Defendants.

Civil Action No. 09 Civ. 2675 (VM) (AJP)

**DEUTSCHE BANK TRUST  
COMPANY AMERICAS' FIRST  
AMENDED ANSWER TO  
CONSOLIDATED FIRST AMENDED  
COMPLAINT AND  
COUNTERCLAIMS**

**JURY TRIAL DEMANDED**

Deutsche Bank Trust Company Americas ("DBTCA"), by and through its undersigned attorneys, respectively files this First Amended Answer to the Consolidated First Amended Complaint filed by Plaintiffs Island Intellectual Property LLC ("Island IP"), LIDs Capital LLC ("LIDs Capital"), Double Rock Corporation ("Double Rock"), and Intrasweep LLC ("Intrasweep") (collectively, the "Island Plaintiffs") and Counterclaims against the Island Plaintiffs, as follows.

**FIRST AMENDED ANSWER TO CONSOLIDATED FIRST AMENDED COMPLAINT**

**NATURE OF THE ACTION**

1. DBTCA admits only that the Island Plaintiffs purport that this is an action for patent infringement in paragraph 1. DBTCA denies any and all remaining allegations of paragraph 1.

A. DBTCA admits only that the Island Plaintiffs purport in paragraph 1A of the Consolidated First Amended Complaint that this is an action for patent infringement arising out of Defendant Total Bank Solutions, LLC's ("TBS") and Defendant DBTCA's



alleged infringement of U.S. Patent No. 7,509,286. DBTCA denies any and all remaining allegations of paragraph 1A.

B. DBTCA admits only that the Island Plaintiffs purport in paragraph 1B of the Consolidated First Amended Complaint that this is an action for patent infringement arising out of Defendant TBS's and Defendant DBTCA's alleged infringement of U.S. Patent No. 7,519,551. DBTCA denies any and all remaining allegations of paragraph 1B.

C. DBTCA admits only that the Island Plaintiffs purport in paragraph 1C of the Consolidated First Amended Complaint that this is an action for patent infringement arising out of Defendant TBS's and Defendant DBTCA's alleged infringement of U.S. Patent No. 7,536,350. DBTCA denies any and all remaining allegations of paragraph 1C.

2. DBTCA only admits that the Island Plaintiffs purport in paragraph 1 of the Consolidated First Amended Complaint that the Consolidated First Amended Complaint asserts claims. DBTCA denies any and all remaining allegations of paragraph 2.

A. DBTCA admits only that the Island Plaintiffs purport in paragraph 2A of the Consolidated First Amended Complaint that the Consolidated First Amended Complaint asserts claims against Defendant TBS and Defendant DBTCA arising from their alleged infringement of Claim 1 of U.S. Patent No. 7,509,286, issued on March 24, 2009, and entitled "Systems and Methods for Money Fund Banking with Flexible Interest Allocation" ("the '286 Patent"). DBTCA denies any and all remaining allegations of paragraph 2A.

B. DBTCA denies all allegations of paragraph 2B to the Consolidated First Amended Complaint.

C. DBTCA admits only that the Island Plaintiffs purport in paragraph 2C of the Consolidated First Amended Complaint that the Consolidated First Amended

Complaint asserts claims against Defendant TBS and Defendant DBTCA arising from their alleged infringement of Claim 1 of U.S. Patent No. 7,519,551 ("the '551 Patent"). DBTCA denies any and all remaining allegations of paragraph 2C.

D. DBTCA admits only that the Island Plaintiffs purport in paragraph 2D of the Consolidated First Amended Complaint that the Consolidated First Amended Complaint asserts claims against Defendant TBS and Defendant DBTCA arising from their alleged infringement of Claim 12 of U.S. Patent No. 7,536,350, issued on May 19, 2009, and entitled "Systems and Methods for Providing Enhanced Account Management Services for Multiple Banks" ("the '350 Patent"). DBTCA denies any and all remaining allegations of paragraph 2D.

3. Responding to paragraph 3 of the Consolidated First Amended Complaint, DBTCA admits that purported copies of the '286 Patent, '551 Patent, and '350 Patent were attached to the Consolidated First Amended Complaint. DBTCA denies any and all remaining allegations of paragraph 3.

#### THE PARTIES

4. Responding to paragraph 4 of the Consolidated First Amended Complaint, DBTCA, upon information and belief, admits that Island IP is a limited liability company, organized and existing under the laws of the State of Delaware and that its principal place of business is located at 1250 Broadway, Thirty-Second Floor, New York, NY 10001, within this District. DBTCA denies any and all remaining allegations in paragraph 4.

5. Responding to paragraph 5 of the Consolidated First Amended Complaint, DBTCA, upon information and belief, admits that LIDs Capital is a limited liability company, organized and existing under the laws of the State of Delaware and that its principal place of

business is located at 1250 Broadway, Thirty-Second Floor, New York, NY 10001, within this District. DBTCA denies any and all remaining allegations in paragraph 5.

6. Responding to paragraph 6 of the Consolidated First Amended Complaint, DBTCA, upon information and belief, admits that Double Rock is a corporation organized and existing under the laws of the State of New Jersey and that its principal place of business is located at 1250 Broadway, Thirty-Second Floor, New York, NY 10001, within this District. DBTCA denies any and all remaining allegations in paragraph 6.

7. Responding to paragraph 7 of the Consolidated First Amended Complaint, DBTCA, upon information and belief, admits that Intraspweep is a limited liability company, organized and existing under the laws of the State of Delaware and that its principal place of business is located at 1250 Broadway, Thirty-Second Floor, New York, NY 10001, within this District. DBTCA denies any and all remaining allegations in paragraph 7.

8. DBTCA is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 8 of the Consolidated First Amended Complaint, and, accordingly denies the same.

9. DBTCA is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 9 of the Consolidated First Amended Complaint, and, accordingly denies the same.

10. Responding to paragraph 10 of the Consolidated Amended Complaint, DBTCA, upon information and belief, admits that Deutsche Bank AG ("DBAG"), no longer a defendant in this action, is a corporation organized and existing under the laws of the Federal Republic of Germany and that DBAG's regional head office is located at 60 Wall Street, New York, New York, 10005, within this District. DBTCA denies any and all of the remaining allegations in paragraph 10.

11. Responding to paragraph 11 of the Consolidated Amended Complaint, DBTCA admits that DBTCA is a corporation organized and existing under the laws of the State of New York and that its principal place of business is located at 60 Wall St., New York, New York 10005, within this District. DBTCA denies any and all remaining allegations in paragraph 11.

12. DBTCA is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 12 of the Consolidated First Amended Complaint, and, accordingly denies the same.

#### JURISDICTION AND VENUE

13. DBTCA admits only that paragraph 13 of the Consolidated First Amended Complaint purports that this is an action for patent infringement arising under the patent statutes, 35 U.S.C. § 1 *et seq.* DBTCA denies any and all remaining allegations in paragraph 13.

14. Responding to paragraph 14 of the Consolidated First Amended Complaint, DBTCA admits that this Court has subject matter jurisdiction over patent claims under 28 U.S.C. §§ 1331 and 1338(a). DBTCA denies any and all remaining allegations in paragraph 14.

15. DBTCA is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 15 of the Consolidated First Amended Complaint, and, accordingly denies the same.

16. DBTCA is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 16 of the Consolidated First Amended Complaint, and, accordingly denies the same.

17. Responding to paragraph 17 of the Consolidated Amended Complaint, DBTCA, upon information and belief, admits that DBAG, no longer a defendant in this action, is subject

to this Court's personal jurisdiction because it does business in this District. DBTCA denies any and all remaining allegations in paragraph 17.

18. Responding to paragraph 18 of the Consolidated Amended Complaint, DBTCA admits that it is subject to the Court's personal jurisdiction for the purpose of this action. DBTCA also admits that it offers and operates banking services and that it maintains an office within the State of New York and this District. DBTCA denies any and all of the remaining allegations in paragraph 18.

19. DBTCA is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 19 of the Consolidated First Amended Complaint, and, accordingly denies the same.

20. Responding to paragraph 20 of the Consolidated Amended Complaint, DBTCA admits that venue is proper in this Court pursuant to 28 U.S.C. §§ 1391 and 1400(b).

#### FACTUAL BACKGROUND

21. DBTCA is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 21 of the Consolidated First Amended Complaint, and, accordingly denies the same.

22. DBTCA is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 22 of the Consolidated First Amended Complaint, and, accordingly denies the same.

23. DBTCA is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 23 of the Consolidated First Amended Complaint, and, accordingly denies the same.

24. DBTCA is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 24 of the Consolidated First Amended Complaint, and, accordingly denies the same.

25. DBTCA is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 25 of the Consolidated First Amended Complaint, and, accordingly denies the same.

26. DBTCA is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 26 of the Consolidated First Amended Complaint, and, accordingly denies the same.

27. DBTCA is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 27 of the Consolidated First Amended Complaint, and, accordingly denies the same.

28. DBTCA is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 28 of the Consolidated First Amended Complaint, and, accordingly denies the same.

#### THE PATENTS-IN-SUIT

29. DBTCA denies the allegations of paragraph 29 of the Consolidated Amended Complaint.

30. DBTCA denies the allegations of paragraph 30 of the Consolidated Amended Complaint.

31. DBTCA denies the allegations of paragraph 31 of the Consolidated Amended Complaint.

32. Responding to paragraph 32 of the Consolidated First Amended Complaint, upon information and belief, DBTCA admits that Island IP is a wholly-owned subsidiary of Double Rock and that it is the owner of all rights, title and interest in the '286 Patent, the '551 Patent, and the '350 Patent. DBTCA denies any and all remaining allegations of paragraph 32.

33. Responding to paragraph 33 of the Consolidated First Amended Complaint, DBTCA, upon information and belief, admits that LIDs Capital is a wholly-owned subsidiary of Double Rock. DBTCA is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of paragraph 33 of the Consolidated First Amended Complaint, and, accordingly denies the same.

34. Responding to paragraph 34 of the Consolidated First Amended Complaint, DBTCA, upon information and belief, admits that Intraseep is a wholly-owned subsidiary of Double Rock. DBTCA is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 34 of the Consolidated First Amended Complaint, and, accordingly denies the same.

35. DBTCA is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 35 of the Consolidated First Amended Complaint, and, accordingly denies the same.

#### THE PROMONTORY AND DREYFUS INFRINGING PRODUCTS

36. DBTCA is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 36 of the Consolidated First Amended Complaint, and, accordingly denies the same.

37. DBTCA is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 37 of the Consolidated First Amended Complaint, and, accordingly denies the same.

38. DBTCA is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 38 of the Consolidated First Amended Complaint, and, accordingly denies the same.

39. DBTCA is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 39 of the Consolidated First Amended Complaint, and, accordingly denies the same.

40. DBTCA is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 40 of the Consolidated First Amended Complaint, and, accordingly denies the same.

41. DBTCA is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 41 of the Consolidated First Amended Complaint, and, accordingly denies the same.

42. DBTCA is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 42 of the Consolidated First Amended Complaint, and, accordingly denies the same.

43. DBTCA is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 43 of the Consolidated First Amended Complaint, and, accordingly denies the same.

**THE DEUTSCHE DEFENDANTS ALLEGEDLY INFRINGING PRODUCTS**

44. Responding to paragraph 44 of the Consolidated First Amended Complaint, DBTCA admits that TBS operates the “Deutsche Bank Insured Deposit Program” (“Deutsche IDP”) within the United States. DBTCA denies any and all remaining allegations of paragraph 44.



45. Responding to paragraph 45 of the Consolidated First Amended Complaint, DBTCA admits that TBS is a financial data processing company that provides the computer and record keeping services for the Deutsche IDP. DBTCA denies any and all remaining allegations of paragraph 45.

46. DBTCA denies the allegations of paragraph 46 to the Consolidated First Amended Complaint.

47. Responding to paragraph 47 of the Consolidated First Amended Complaint, DBTCA admits that it does not have a license or other authorization from any of the Island Plaintiffs to practice the claims set forth in the '286 Patent. DBTCA denies any and all remaining allegations in paragraph 47.

48. DBTCA denies the allegations of paragraph 48 to the Consolidated First Amended Complaint.

49. Responding to paragraph 49 of the Consolidated First Amended Complaint, DBTCA admits that it does not have a license or other authorization from any of the Island Plaintiffs to practice the claims set forth in the '551 Patent. DBTCA denies any and all remaining allegations in paragraph 49.

50. DBTCA denies the allegations of paragraph 50 to the Consolidated First Amended Complaint.

51. Responding to paragraph 51 of the Consolidated First Amended Complaint, DBTCA admits that it does not have a license or other authorization from any of the Island Plaintiffs to practice the claims set forth in the '350 Patent. DBTCA denies any and all remaining allegations in paragraph 51.

52. DBTCA is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 52 of the Consolidated First Amended Complaint, and, accordingly denies the same.

COUNT ONE

(By Plaintiffs Island IP, LIDs Capital and Double Rock for Patent Infringement by the Defendant Promontory and Defendant MBSC of the '286 Patent)

53. Responding to paragraph 53 of the Consolidated Amended Complaint, DBTCA admits only that the Island Plaintiffs purport to repeat and reallege the allegations of paragraphs 1 through 52 of their claims and DBTCA incorporates its responses thereto as if fully set forth herein.

54. DBTCA is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 54 of the Consolidated First Amended Complaint, and, accordingly denies the same.

55. DBTCA is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 55 of the Consolidated First Amended Complaint, and, accordingly denies the same.

56. DBTCA is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 56 of the Consolidated First Amended Complaint, and, accordingly denies the same.

57. DBTCA is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 57 of the Consolidated First Amended Complaint, and, accordingly denies the same.

COUNT TWO

(By Plaintiffs Island IP, LIDs Capital and Double Rock for Patent Infringement by the Deutsche Defendants of the '286 Patent)

58. Responding to paragraph 58 of the Consolidated Amended Complaint, DBTCA admits only that the Island Plaintiffs purport to repeat and reallege the allegations of paragraphs 1 through 52 of their claims and DBTCA incorporates its responses thereto as if fully set forth herein.

59. DBTCA denies the allegations of paragraph 59 to the Consolidated First Amended Complaint.

60. DBTCA denies the allegations of paragraph 60 to the Consolidated First Amended Complaint.

61. DBTCA denies the allegations of paragraph 61 to the Consolidated First Amended Complaint.

62. DBTCA denies the allegations of paragraph 62 to the Consolidated First Amended Complaint.

COUNT THREE

(By Plaintiffs Island IP, LIDs Capital and Double Rock for Patent Infringement by Defendant Promontory of the '551 Patent)

63. Responding to paragraph 63 of the Consolidated Amended Complaint, DBTCA admits only that the Island Plaintiffs purport to repeat and reallege the allegations of paragraphs 1 through 52 of their claims and DBTCA incorporates its responses thereto as if fully set forth herein.

64. DBTCA is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 64 of the Consolidated First Amended Complaint, and, accordingly denies the same.

65. DBTCA is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 65 of the Consolidated First Amended Complaint, and, accordingly denies the same.

66. DBTCA is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 66 of the Consolidated First Amended Complaint, and, accordingly denies the same.

67. DBTCA is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 67 of the Consolidated First Amended Complaint, and, accordingly denies the same.

68. DBTCA is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 68 of the Consolidated First Amended Complaint, and, accordingly denies the same.

#### COUNT FOUR

(By Plaintiffs Island IP, LIDs Capital and Double Rock for Patent Infringement by the Deutsche Defendants of the '286 Patent)

69. Responding to paragraph 69 of the Consolidated Amended Complaint, DBTCA admits only that the Island Plaintiffs purport to repeat and reallege the allegations of paragraphs 1 through 52 of their claims and DBTCA incorporates its responses thereto as if fully set forth herein.

70. DBTCA denies the allegations of paragraph 70 to the Consolidated First Amended Complaint.

71. DBTCA denies the allegations of paragraph 71 to the Consolidated First Amended Complaint.

72. Responding to paragraph 72 of the Consolidated Amended Complaint, DBTCA admits that it has been on notice of a published Application which matured into the '551 Patent since on or about October 18, 2005. DBTCA denies any and all remaining allegations of paragraph 72.

73. DBTCA denies the allegations of paragraph 73 to the Consolidated First Amended Complaint.

74. DBTCA denies the allegations of paragraph 74 to the Consolidated First Amended Complaint.

#### COUNT FIVE

(By Plaintiffs Island IP, LIDs Capital and Double Rock for Patent Infringement by the Deutsche Defendants of the '286 Patent)

75. Responding to paragraph 75 of the Consolidated Amended Complaint, DBTCA admits only that the Island Plaintiffs purport to repeat and reallege the allegations of paragraphs 1 through 52 of their claims and DBTCA incorporates its responses thereto as if fully set forth herein.

76. DBTCA denies the allegations of paragraph 76 to the Consolidated First Amended Complaint.

77. DBTCA denies the allegations of paragraph 77 to the Consolidated First Amended Complaint.

78. DBTCA denies the allegations of paragraph 78 to the Consolidated First Amended Complaint.

79. DBTCA denies the allegations of paragraph 79 to the Consolidated First Amended Complaint.

PRAYER FOR RELIEF

I. WITH RESPECT TO THE '286 PATENT

- A. DBTCA denies that the Island Plaintiffs are entitled to the relief requested in Paragraph I.A.
- B. DBTCA denies that the Island Plaintiffs are entitled to the relief requested in Paragraph I.B.
- C. DBTCA denies that the Island Plaintiffs are entitled to the relief requested in Paragraph I.C.
- D. DBTCA denies that the Island Plaintiffs are entitled to the relief requested in Paragraph I.D.

II. WITH RESPECT TO THE '551 PATENT

- A. DBTCA denies that the Island Plaintiffs are entitled to the relief requested in Paragraph II.A.
- B. DBTCA denies that the Island Plaintiffs are entitled to the relief requested in Paragraph II.B.
- C. DBTCA denies that the Island Plaintiffs are entitled to the relief requested in Paragraph II.C.

D. DBTCA denies that the Island Plaintiffs are entitled to the relief requested in Paragraph II.D.

E. DBTCA denies that the Island Plaintiffs are entitled to the relief requested in Paragraph II.E.

III. WITH RESPECT TO THE '350 PATENT

A. DBTCA denies that the Island Plaintiffs are entitled to the relief requested in Paragraph III.A.

B. DBTCA denies that the Island Plaintiffs are entitled to the relief requested in Paragraph III.B.

C. DBTCA denies that the Island Plaintiffs are entitled to the relief requested in Paragraph III.C.

D. DBTCA denies that the Island Plaintiffs are entitled to the relief requested in Paragraph III.D.

80. DBTCA admits that the Island Plaintiffs have requested a trial by jury in paragraph 80 of the Consolidated First Amended Complaint.

AFFIRMATIVE DEFENSES

First Affirmative Defense (Non-Infringement)

81. The Island Plaintiffs are not entitled to any relief against DBTCA because DBTCA is not infringing and has not infringed, directly, by inducement, contributorily or in any way, any valid claims of the '286, '551, and '350 Patents.

Second Affirmative Defense (Invalidity)

82. Upon information and belief, one or more claims of the '286, '551, and '350 Patents are invalid at least for failure to meet the requirements of Title 35 of the United States Code, particularly, but not limited to, 35 U.S.C. §§ 101, 102, 103, and 112.

Third Affirmative Defense (Unenforceability)

83. Upon information and belief, and on the basis of conduct in the United States Patent and Trademark Office ("USPTO"), during the prosecution of the applications that matured into the '286, '551, and '350 Patents, the Island Plaintiffs are barred from asserting the '286, '551, and '350 Patents against DBTCA for having engaged in inequitable conduct.

A. Failure to Disclose Details of the Reserve Insured Deposits Program

84. Upon information and belief, the Island Plaintiffs, named inventors, or attorneys, agents, or representatives of the Island Plaintiffs who were associated with the prosecution of the applications that matured into the '286, '551 and '350 Patents and other related applications, and in particular Bruce Bent and Bruce Bent II, knowingly and intentionally failed to disclose and made material misrepresentations regarding the prior sale and public use of the Reserve Insured Deposits program. These failures to disclose and material misrepresentations were performed with an intent to deceive the USPTO.

85. The application that led to the issuance of the '286 Patent, which was filed on April 11, 2003, is a continuation-in-part of the application that led to the issuance of the '350 Patent, which was filed on March 6, 2003, and is also a continuation in part of the application that led to the issuance of the '551 Patent, which was filed on February 8, 2002. The application that led to the issuance of the '350 Patent is also a continuation-in-part of the application that led to the issuance of the '551 Patent. The applications that led to the issuance of the '286, '551, and '350 Patents, respectively, are also all continuations-in-part of U.S. Application No. 09/677,535



("the '535 Application"), which was filed on October 2, 2000. The '535 Application and the application that led to the issuance of the '551 Patent also are continuations-in-part of the application that led to the issuance of U.S. Patent No. 6,374,231, which was filed on October 21, 1998 ("the '231 Patent"). The '286, '551, and '350 Patents are therefore related to both the '535 Application and the '231 Patent.

86. Upon information and belief, Double Rock was formerly known as the Reserve Management Corporation ("Reserve"). Upon information and belief, the principals of Reserve were also the principals of a related entity, called The Reserve Funds. Upon information and belief, The Reserve Funds offered a program called Reserve Insured Deposits. Upon information and belief, the Reserve Insured Deposits program is prior art under 35 U.S.C. § 102(b) to the '231 Patent.

87. On September 21, 2001, Reserve filed a trademark application (Ser. No. 76/315,660) with the USPTO for the mark RESERVE INSURED DEPOSITS. Reserve's application specified that the mark was for "financial services, namely, providing insured money market account services," with a first use in commerce on October 9, 1997. On October 18, 2006, Reserve filed a request to change the date of the first use in commerce to December 31, 1997. In support of its request, Reserve attached an October 17, 2006 declaration by Bruce Bent II, which stated that the first use in commerce was actually October 23, 1997.

88. During the prosecution of the '286, '551, and '350 Patents, as well as during the prosecution of the '231 Patent, the Island Plaintiffs, named inventors, or attorneys, agents, or representatives of the Island Plaintiffs who were associated with the prosecution of these patents, submitted an information disclosure statement ("IDS"), in or around March 2007, disclosing an advertisement in the October 1997 issue of the periodical "Mutual Funds" by Reserve that advertised an "FDIC insured money market account with free, unlimited, no minimum checking." Upon information and belief, this advertisement was circulated as early as September

8, 1997. These IDSs also included a February 27, 2007 declaration by Bruce Bent II, who was the senior vice president of Reserve at the time and is a named inventor of the '231, '286, '551, and '350 Patents, that stated that the first use in commerce of the Reserve Insured Deposits program was actually October 23, 1997 and that the October 9, 2007 date that was used in the trademark application was an error.

89. Upon information and belief, Bruce Bent II's February 27, 2007 declaration referred to and attached a true copy of the "Mutual Funds" advertisement. Upon information and belief, this advertisement advertised that the Reserve Insured Deposits Accounts offered "high interest (4.26% as of 8/6/97)."

90. Upon information and belief, the Reserve Insured Deposits program was in use in commerce as early as August 1997. On page 10 of a 2004 report entitled "Brokerage Cash Sweep Options: The Shift from Money Funds to FDIC-Insured Bank Deposit Accounts," published by iMoneyNet and sponsored by The Reserve Funds ("iMoneyNet Article"), the report states that "Money fund-inventor The Reserve Funds introduced Reserve Insured Deposits® in August 1997."

91. Upon information and belief, the Reserve Insured Deposits program, as it existed in August 1997, was within the scope of the '231 Patent and was put on sale and in public use more than one year prior to the filing date of October 21, 1998. Upon information and belief, the Reserve Insured Deposits program, as it existed in August 1997, is material to all of the claims and all of the limitations of the '231 Patent, including at least the limitation of claim 1 of the '231 Patent that recites, "determining the net transaction aggregated across all said demand account deposits and withdrawals on a regular periodic basis." Upon information and belief, had the Examiner of the application that led to the issuance of the '231 Patent known that the Reserve Insured Deposits program was available as early as August 1997, the Examiner could

have rejected all of the claims in the application that led to the issuance of the '231 Patent under 35 U.S.C. § 102(b).

92. Upon information and belief, the Island Plaintiffs, named inventors, or attorneys, agents, or representatives of the Island Plaintiffs who were associated with the prosecution of the '231 Patent, and in particular Bruce Bent and Bruce Bent II as principals of Reserve, knowingly and intentionally failed to disclose and made material misrepresentations regarding the sales and public uses of the Reserve Insured Deposits program prior to October 21, 1997. Upon information and belief, the failures to disclose information and material misrepresentations, including, but not limited to, the examples provided in paragraphs 84 through 91, were made with an intent to deceive the USPTO and thus constitute inequitable conduct that would render the '231 Patent unenforceable. Under the doctrine of infectious unenforceability, this inequitable conduct during the prosecution of the '231 Patent renders unenforceable later-filed applications, including the applications that led to the '286, '551, and '350 Patents.

**B. Material Misrepresentations Regarding The First Use In Commerce Of The Reserve Insured Deposits Program**

93. Upon information and belief, the Island Plaintiffs, named inventors, or attorneys, agents, or representatives of the Island Plaintiffs who were associated with the filing and prosecution of the application that led to the issuance of the '286, '551, and '350 Patents and other related applications, and in particular Bruce Bent II, knowingly and intentionally made material misrepresentations to the USPTO with the intent to deceive the USPTO regarding the date of the first use in commerce of the Reserve Insured Deposits program.

94. Upon information and belief, on March 10, 2008, the USPTO rejected all pending claims in the application that eventually led to the issuance of the '286 Patent under 35 U.S.C. § 102(b), citing a prior public use of the Reserve Insured Deposits program. In response, in an Amendment dated May 9, 2008, Reserve quoted language from Bruce Bent II's declaration from February 27, 2007, that stated that the first use in commerce was October 23, 1997.

95. Upon information and belief, had the Examiner of the application that led to the issuance of the '286 Patent known that the Reserve Insured Deposits program was available as early as August 1997, the Examiner could have maintained his rejections under 35 U.S.C. § 102(b). Thus, this material misrepresentation evidences an intent to deceive the USPTO and constitutes inequitable conduct, which renders the '286 Patent unenforceable.

96. Upon information and belief, on April 5, 2007, the USPTO rejected all pending claims in the application that eventually led to the issuance of the '551 Patent under 35 U.S.C. § 102(b), and requested information regarding the prior public use of the Reserve Insured Deposits program. In response, in an Amendment dated October 5, 2007, Reserve quoted language from Bruce Bent II's declaration from February 27, 2007, that stated that the first use in commerce was October 23, 1997.

97. Upon information and belief, had the Examiner of the application that led to the issuance of the '551 Patent known that the Reserve Insured Deposits program was available as early as August 1997, the Examiner could have rejected all of the claims under 35 U.S.C. § 102(b).

98. Upon information and belief, the Reserve Insured Deposits program, as it existed in August 1997, is material to all of the claims and all of the limitations of the '551 Patent, including at least limitation (d) of claim 1 of the '551 Patent, which states that funds may be withdrawn from a money market deposit account "more than six (6) times during a month while preserving an insured and interest-bearing status of the FDIC-insured and interest-bearing aggregated deposit account held at the one bank," which is a limitation that the Examiner could not find in the prior art. Upon information and belief, had the Examiner of the application that led to the issuance of the '551 Patent known that the Reserve Insured Deposits program was available as early as August 1997, the Examiner could have rejected all of the claims under 35 U.S.C. § 103 using U.S. Patent No. 4,985,833 in view of the Reserve Insured Deposits program.

Thus, this material misrepresentation evidences an intent to deceive the USPTO and constitutes inequitable conduct, which renders the '551 Patent unenforceable.

99. Upon information and belief, on March 10, 2008, the USPTO rejected all pending claims in the application that eventually led to the issuance of the '350 Patent under 35 U.S.C. § 102(b), citing a prior public use of the Reserve Insured Deposits program. In response, in an Amendment dated May 9, 2008, Reserve quoted language from Bruce Bent II's declaration from February 27, 2007, that stated that the first use in commerce was October 23, 1997.

100. Upon information and belief, had the Examiner of the application that led to the issuance of the '350 Patent known that the Reserve Insured Deposits program was available as early as August 1997, the Examiner could have maintained his rejections under 35 U.S.C. § 102(b). Thus, this material misrepresentation evidences an intent to deceive the USPTO and constitutes inequitable conduct, which renders the '350 Patent unenforceable.

C. Failure to Disclose the Original 1983 CMA/ISA Service

101. Upon information and belief, the Island Plaintiffs, named inventors, or attorneys, agents, or representatives of the Island Plaintiffs who were associated with the prosecution of the applications that matured into the '286, '551 and '350 Patents and other related applications, and in particular Bruce Bent and Bruce Bent II, knowingly, and with the intent to deceive the USPTO, failed to disclose material information regarding the Insured Savings Account feature in Merrill Lynch's Cash Management Account Service.

102. Upon information and belief, the first deposit sweep service was developed and offered by Merrill Lynch, Pierce, Fenner & Smith ("Merrill Lynch"). As a broker-dealer, Merrill Lynch offered this service to its brokerage customers at least as early as 1983 as a feature of Merrill Lynch's Cash Management Account ("CMA"), brokerage account with cash management features. Merrill Lynch called this feature the Insured Savings Account ("ISA") (collectively, "Original 1983 CMA/ISA Service"). Upon information and belief, details of the

Original 1983 CMA/ISA Service are highly material to several, if not all, of the claim limitations in the '286, '551, and '350 Patents.

103. Upon information and belief, details of the Original 1983 CMA/ISA Service were well-known in the financial industry. Upon information and belief, Bruce Bent and Bruce Bent II, as financial industry insiders, knowingly and intentionally withheld details of the Original 1983 CMA/ISA Service, including, but not limited to, the fact that the Original 1983 CMA/ISA Service tied interest rates to a balance of funds. Upon information and belief, this omission is both material and non-cumulative to all of the claims, including at least the limitation of claim 1 of the '286 Patent that recites: "determining ... a respective interest rate ... based at least in part on the updated balance of funds associated with the client account in the subset." This is a limitation that Reserve used to distinguish claim 1 of the '286 Patent from the prior art during prosecution.

104. Upon information and belief, had the Examiner of the application that led to the issuance of the '286 Patent known that the Original 1983 CMA/ISA Service tied interest rates to a balance of funds, the Examiner could have rejected all of the claims under 35 U.S.C. § 103 using a combination of U.S. Patent No. 4,985,833 and the Original 1983 CMA/ISA Service. Thus, this failure to disclose material information constitutes inequitable conduct, which renders the '286 Patent unenforceable. Under the doctrine of infectious unenforceability, this inequitable conduct during the prosecution of the '286 Patent renders unenforceable the applications that led to the '551 and '350 Patents.

**D. Failure to Disclose And Material Misrepresentations Regarding the Merrill Lynch Banking Advantage Program**

105. Upon information and belief, the Island Plaintiffs, named inventors, or attorneys, agents, or representatives of the Island Plaintiffs who were associated with the prosecution of the applications that matured into the '286, '551 and '350 Patents and other related applications, and in particular Bruce Bent and Bruce Bent II, knowingly, and with the intent to deceive the

USPTO, failed to disclose material information regarding the Merrill Lynch Banking Advantage Program.

106. Upon information and belief, at least as early as 1998, Merrill Lynch began developing a second deposit sweep service. Merrill Lynch offered this second service to its brokerage customers at least as early as 2000 under the name Cash Management Account 2.0 ("2000 CMA 2.0 Service").

107. Upon information and belief, at least as early as 2000, Merrill Lynch began offering another related program called the Merrill Lynch Banking Advantage Program ("MLBA Program") as part of the 2000 CMA 2.0 Service. Upon information and belief, details of the MLBA Program are highly material to several, if not all, of the claim limitations in the '286, '551, and '350 Patents.

108. Upon information and belief, the Island Plaintiffs, named inventors, or attorneys, agents, or representatives of the Island Plaintiffs who were associated with the filing and prosecution of the then-pending application that led to the issuance of the '551 Patent, disclosed two material references regarding the MLBA Program to the USPTO in an IDS on March 3, 2009. In disclosing the two material references, the Island Plaintiffs certified that "to the knowledge of the undersigned, after making reasonable inquiry, no item of information contained in the [IDS] was known to any individual designated in 37 C.F.R. § 1.56(c) more than three months prior to the filing of the [IDS]." Upon information and belief, Bruce Bent II, one of the named inventors of the '286, '551, and '350 Patents, was aware of the MLBA Program long before the filing of the IDS, as evidence by his comments about the program in a November 2000 article, entitled "Merrill Moves CMA Cash to Bank," which can be found on page 26 of the periodical, "On Wall Street."

109. Upon information and belief, the Island Plaintiffs, named inventors, or attorneys, agents, or representatives of the Island Plaintiffs, and in particular Bruce Bent and Bruce Bent II

as principals of Reserve, were also aware of the MLBA Program more than three months before the filing of the March 3, 2009 IDS, as evidenced by page 11 of the iMoneyNet Article.

110. Upon information and belief, Bruce Bent II knowingly and intentionally withheld details of the MLBA Program, including, but not limited to, the fact that the MLBA Program tied interest rates to a balance of funds as early as June 2001. Upon information and belief, this omission is both material and non-cumulative to all of the claims, including at least the limitation of claim 1 of the '286 Patent that recites: "determining ... a respective interest rate ... based at least in part on the updated balance of funds associated with the client account in the subset." This is a limitation that Reserve used to distinguish claim 1 of the '286 Patent from the prior art during prosecution.

111. Upon information and belief, had the Examiner of the application that led to the issuance of the '286 Patent known that the MLBA Program tied interest rates to a balance of funds, the Examiner could have rejected all of the claims under 35 U.S.C. § 103(b) using a combination of U.S. Patent No. 4,985,833 and the MLBA Program. Thus, this failure to disclose material information constitutes inequitable conduct, which renders the '286 Patent unenforceable. Under the doctrine of infectious unenforceability, this inequitable conduct during the prosecution of the '286 Patent renders unenforceable the applications that led to the '551 and '350 Patents.

E. Failure to Disclose Information Regarding Deposit Sweep Services

112. Upon information and belief, the Island Plaintiffs, named inventors, or attorneys, agents, or representatives of the Island Plaintiffs who were associated with the filing and prosecution of the applications that led to the issuance of the '231 Patent, and in particular Bruce Bent and Bruce Bent II, knowingly and intentionally withheld material information from the USPTO regarding deposit sweep services, including a letter from Michael Bradford (General



Counsel for the Federal Reserve Board) dated November 16, 1984 (“the Bradford Letter”). This constitutes inequitable conduct that would render the ’231 Patent unenforceable.

113. Upon information and belief, the Bradford Letter was widely disseminated in the financial industry, which leads to the reasonable inference that Bruce Bent and Bruce Bent II were aware of this letter when they designed their original Reserve Insured Deposits program and when the application that led to the issuance of the ’231 Patent was filed. Upon information and belief, the Bradford Letter discusses a proposal about how a bank could link a money market deposit account (“MMDA”) to a demand deposit account (“DDA”) in such a way to avoid the six withdrawal limit of 12 C.F.R. 1204.122 and to provide interest on checking accounts.

114. Upon information and belief, the Bradford Letter is at least material to the limitation of claim 1 in the ’231 Patent that recites “... to deposit funds to or withdraw funds from said single insured money market deposit account.” This is because in an Office Action Response on September 22, 2000, the Island Plaintiffs argued that claim 1 was patentably distinct over the prior art because it solved the six withdrawal limitation problem that was identified by the prior art. Upon information and belief, the Island Plaintiffs’ mechanism for avoiding the six withdrawal limitation is substantially similar to the proposal described in the Bradford Letter. This failure to disclose the material Bradford Letter constitutes inequitable conduct, which renders the ’231 Patent unenforceable.

115. Under the doctrine of infectious unenforceability, this inequitable conduct during the prosecution of the ’231 Patent renders unenforceable later-filed applications, including the applications that led to the ’286, ’551, and ’350 Patents.

**DBTCA'S FIRST AMENDED COUNTERCLAIMS**

**THE PARTIES**

116. DBTCA is a corporation organized and existing under the laws of the State of New York. DBTCA's principal place of business is located at 60 Wall Street, New York, New York, 10005, within this District.

117. Upon information and belief, Island IP is a limited liability company organized and existing under the laws of the State of Delaware. Island IP's principal place of business is located at 1250 Broadway, Thirty-Second Floor, New York, NY 10001, within this District.

118. Upon information and belief, LIDs Capital is a limited liability company, organized and existing under the laws of the State of Delaware. LIDs Capital's principal place of business is located at 1250 Broadway, Thirty-Second Floor, New York, NY 10001, within this District.

119. Upon information and belief, Double Rock is corporation, organized and existing under the laws of the State of New Jersey. Double Rock's principal place of business is located at 1250 Broadway, Thirty-Second Floor, New York, NY 10001, within this District.

120. Upon information and belief, Intrasweep is a limited liability company, organized and existing under the laws of the State of Delaware. Intrasweep's principal place of business is located at 1250 Broadway, Thirty-Second Floor, New York, NY 10001, within this District.

**JURISDICTION AND VENUE**

121. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331, 1338(a), 2201 and 2202.

122. Upon information and belief, Island IP is subject to personal jurisdiction in this judicial district because Island IP regularly conducts and transacts business in this judicial district and because its principal place of business is within this judicial district.

123. Upon information and belief, LIDs Capital is subject to personal jurisdiction in this judicial district because LIDs Capital regularly conducts and transacts business in this judicial district and because its principal place of business is within this judicial district.

124. Upon information and belief, Double Rock is subject to personal jurisdiction in this judicial district because Double Rock regularly conducts and transacts business in this judicial district and because its principal place of business is within this judicial district.

125. Upon information and belief, Intrasweep is subject to personal jurisdiction in this judicial district because Intrasweep regularly conducts and transacts business in this judicial district and because its principal place of business is within this judicial district.

126. Venue is appropriate in this judicial district pursuant to 28 U.S.C. §§ 1391 and 1400(b).

#### CLAIMS FOR RELIEF

##### COUNT I

##### (Declaratory Judgment of Non-Infringement of U.S. Patent Nos. 7,509,286, 7,519,551, and 7,536,350)

127. The allegations contained in paragraphs 116 through 126 of this counterclaim are incorporated by reference herein with the same force and effect as if set forth in full below.

128. Upon information and belief, Island IP is the owner of all right, title and interest in and to the '286, '551 and '350 Patents.

129. DBTCA does not directly infringe, contribute to the infringement of, or induce infringement of, any valid claims of the '286, '551, and '350 Patents.

130. The Island Plaintiffs have charged in their Consolidated First Amended Complaint that DBTCA has been and still is infringing the '286, '551 and '350 Patents in light of its activities in connection with the Deutsche IDP.

131. DBTCA denies that DBTCA has been or is infringing, directly or indirectly, any of the claims of the '286, '551 and '350 Patents or otherwise engaging in any wrongdoing with respect to such patents. DBTCA has averred, and continues to aver, that it has not infringed and is not presently infringing any valid or enforceable claims contained in the '286, '551 and '350 Patents and it is not liable for damages, injunctive or other relief arising from any such alleged infringement.

132. There exists an actual and justiciable controversy between DBTCA and the Island Plaintiffs as to whether DBTCA infringes any claims of the '286, '551 and '350 Patents. This controversy is of sufficient immediacy and reality to warrant the issuance of a declaratory judgment.

133. Pursuant to 28 U.S.C. §§ 2201 and 2202, DBTCA is entitled to a declaratory judgment that it does not infringe any claim of the '286, '551, and '350 Patents.

## COUNT II

### (Declaratory Judgment of Invalidity of U.S. Patent Nos. 7,509,286, 7,519,551, and 7,536,350)

134. The allegations contained in paragraphs 116 through 133 of this counterclaim are incorporated by reference herein with the same force and effect as if set forth in full below.

135. Each and every claim of the '286, '551, and '350 Patents is invalid for failure to meet one or more of the requirements of Title 35 of the United States Code, particularly, but not limited to, 35 U.S.C. §§ 101, 102, 103, and 112.

136. There exists an actual and justiciable controversy between DBTCA and the Island Plaintiffs as to whether each and every claim of the '286, '551 and '350 Patents is invalid. This controversy is of sufficient immediacy and reality to warrant the issuance of a declaratory judgment.

137. Pursuant to 28 U.S.C. §§ 2201 and 2202, DBTCA is entitled to a declaratory judgment that each and every claim of the '286, '551, and '350 Patents is invalid.

### COUNT III

#### (Declaratory Judgment of Unenforceability of U.S. Patent Nos. 7,509,286, 7,519,551, and 7,536,350)

138. The allegations contained in paragraphs 116 through 137 of this counterclaim are incorporated by reference herein with the same force and effect as if set forth in full below.

139. Upon information and belief, and on the basis of conduct in the United States Patent and Trademark Office ("USPTO"), during the prosecution of the applications that matured into the '286, '551, and '350 Patents, the Island Plaintiffs are barred from asserting the '286, '551, and '350 Patents against DBTCA for having engaged in inequitable conduct.

#### A. Failure to Disclose Details of the Reserve Insured Deposits Program

140. Upon information and belief, the Island Plaintiffs, named inventors, or attorneys, agents, or representatives of the Island Plaintiffs who were associated with the prosecution of the applications that matured into the '286, '551 and '350 Patents and other related applications, and in particular Bruce Bent and Bruce Bent II, knowingly and intentionally failed to disclose and made material misrepresentations regarding the prior sale and public use of the Reserve Insured

Deposits program. These failures to disclose and material misrepresentations were performed with an intent to deceive the USPTO.

141. The application that led to the issuance of the '286 Patent, which was filed on April 11, 2003, is a continuation-in-part of the application that led to the issuance of the '350 Patent, which was filed on March 6, 2003, and is also a continuation in part of the application that led to the issuance of the '551 Patent, which was filed on February 8, 2002. The application that led to the issuance of the '350 Patent is also a continuation-in-part of the application that led to the issuance of the '551 Patent. The applications that led to the issuance of the '286, '551, and '350 Patents, respectively, are also all continuations-in-part of U.S. Application No. 09/677,535 ("the '535 Application"), which was filed on October 2, 2000. The '535 Application and the application that led to the issuance of the '551 Patent also are continuations-in-part of the application that led to the issuance of U.S. Patent No. 6,374,231, which was filed on October 21, 1998 ("the '231 Patent"). The '286, '551, and '350 Patents are therefore related to both the '535 Application and the '231 Patent.

142. Upon information and belief, Double Rock was formerly known as the Reserve Management Corporation ("Reserve"). Upon information and belief, the principals of Reserve were also the principals of a related entity, called The Reserve Funds. Upon information and belief, The Reserve Funds offered a program called Reserve Insured Deposits. Upon information and belief, the Reserve Insured Deposits program is prior art under 35 U.S.C. § 102(b) to the '231 Patent.

143. On September 21, 2001, Reserve filed a trademark application (Ser. No. 76/315,660) with the USPTO for the mark RESERVE INSURED DEPOSITS. Reserve's application specified that the mark was for "financial services, namely, providing insured money market account services," with a first use in commerce on October 9, 1997. On October 18, 2006, Reserve filed a request to change the date of the first use in commerce to December 31,

1997. In support of its request, Reserve attached an October 17, 2006 declaration by Bruce Bent II, which stated that the first use in commerce was actually October 23, 1997.

144. During the prosecution of the '286, '551, and '350 Patents, as well as during the prosecution of the '231 Patent, the Island Plaintiffs, named inventors, or attorneys, agents, or representatives of the Island Plaintiffs who were associated with the prosecution of these patents, submitted an information disclosure statement ("IDS"), in or around March 2007, disclosing an advertisement in the October 1997 issue of the periodical "Mutual Funds" by Reserve that advertised an "FDIC insured money market account with free, unlimited, no minimum checking." Upon information and belief, this advertisement was circulated as early as September 8, 1997. These IDSs also included a February 27, 2007 declaration by Bruce Bent II, who was the senior vice president of Reserve at the time and is a named inventor of the '231, '286, '551, and '350 Patents, that stated that the first use in commerce of the Reserve Insured Deposits program was actually October 23, 1997 and that the October 9, 2007 date that was used in the trademark application was an error.

145. Upon information and belief, Bruce Bent II's February 27, 2007 declaration referred to and attached a true copy of the "Mutual Funds" advertisement. Upon information and belief, this advertisement advertised that the Reserve Insured Deposits Accounts offered "high interest (4.26% as of 8/6/97)."

146. Upon information and belief, the Reserve Insured Deposits program was in use in commerce as early as August 1997. On page 10 of a 2004 report entitled "Brokerage Cash Sweep Options: The Shift from Money Funds to FDIC-Insured Bank Deposit Accounts," published by iMoneyNet and sponsored by The Reserve Funds ("iMoneyNet Article"), the report states that "Money fund-inventor The Reserve Funds introduced Reserve Insured Deposits® in August 1997."

147. Upon information and belief, the Reserve Insured Deposits program, as it existed in August 1997, was within the scope of the '231 Patent and was put on sale and in public use more than one year prior to the filing date of October 21, 1998. Upon information and belief, the Reserve Insured Deposits program, as it existed in August 1997, is material to all of the claims and all of the limitations of the '231 Patent, including at least the limitation of claim 1 of the '231 Patent that recites, "determining the net transaction aggregated across all said demand account deposits and withdrawals on a regular periodic basis." Upon information and belief, had the Examiner of the application that led to the issuance of the '231 Patent known that the Reserve Insured Deposits program was available as early as August 1997, the Examiner could have rejected all of the claims in the application that led to the issuance of the '231 Patent under 35 U.S.C. § 102(b).

148. Upon information and belief, the Island Plaintiffs, named inventors, or attorneys, agents, or representatives of the Island Plaintiffs who were associated with the prosecution of the '231 Patent, and in particular Bruce Bent and Bruce Bent II as principals of Reserve, knowingly and intentionally failed to disclose and made material misrepresentations regarding the sales and public uses of the Reserve Insured Deposits program prior to October 21, 1997. Upon information and belief, the failures to disclose information and material misrepresentations, including, but not limited to, the examples provided in paragraphs 140 through 147, were made with an intent to deceive the USPTO and thus constitute inequitable conduct that would render the '231 Patent unenforceable. Under the doctrine of infectious unenforceability, this inequitable conduct during the prosecution of the '231 Patent renders unenforceable later-filed applications, including the applications that led to the '286, '551, and '350 Patents.

**B. Material Misrepresentations Regarding The First Use In Commerce Of The Reserve Insured Deposits Program**

149. Upon information and belief, the Island Plaintiffs, named inventors, or attorneys, agents, or representatives of the Island Plaintiffs who were associated with the filing and



prosecution of the application that led to the issuance of the '286, '551, and '350 Patents and other related applications, and in particular Bruce Bent II, knowingly and intentionally made material misrepresentations to the USPTO with the intent to deceive the USPTO regarding the date of the first use in commerce of the Reserve Insured Deposits program.

150. Upon information and belief, on March 10, 2008, the USPTO rejected all pending claims in the application that eventually led to the issuance of the '286 Patent under 35 U.S.C. § 102(b), citing a prior public use of the Reserve Insured Deposits program. In response, in an Amendment dated May 9, 2008, Reserve quoted language from Bruce Bent II's declaration from February 27, 2007, that stated that the first use in commerce was October 23, 1997.

151. Upon information and belief, had the Examiner of the application that led to the issuance of the '286 Patent known that the Reserve Insured Deposits program was available as early as August 1997, the Examiner could have maintained his rejections under 35 U.S.C. § 102(b). Thus, this material misrepresentation evidences an intent to deceive the USPTO and constitutes inequitable conduct, which renders the '286 Patent unenforceable.

152. Upon information and belief, on April 5, 2007, the USPTO rejected all pending claims in the application that eventually led to the issuance of the '551 Patent under 35 U.S.C. § 102(b), and requested information regarding the prior public use of the Reserve Insured Deposits program. In response, in an Amendment dated October 5, 2007, Reserve quoted language from Bruce Bent II's declaration from February 27, 2007, that stated that the first use in commerce was October 23, 1997.

153. Upon information and belief, had the Examiner of the application that led to the issuance of the '551 Patent known that the Reserve Insured Deposits program was available as early as August 1997, the Examiner could have rejected all of the claims under 35 U.S.C. § 102(b).

154. Upon information and belief, the Reserve Insured Deposits program, as it existed in August 1997, is material to all of the claims and all of the limitations of the '551 Patent, including at least limitation (d) of claim 1 of the '551 Patent, which states that funds may be withdrawn from a money market deposit account "more than six (6) times during a month while preserving an insured and interest-bearing status of the FDIC-insured and interest-bearing aggregated deposit account held at the one bank," which is a limitation that the Examiner could not find in the prior art. Upon information and belief, had the Examiner of the application that led to the issuance of the '551 Patent known that the Reserve Insured Deposits program was available as early as August 1997, the Examiner could have rejected all of the claims under 35 U.S.C. § 103 using U.S. Patent No. 4,985,833 in view of the Reserve Insured Deposits program. Thus, this material misrepresentation evidences an intent to deceive the USPTO and constitutes inequitable conduct, which renders the '551 Patent unenforceable.

155. Upon information and belief, on March 10, 2008, the USPTO rejected all pending claims in the application that eventually led to the issuance of the '350 Patent under 35 U.S.C. § 102(b), citing a prior public use of the Reserve Insured Deposits program. In response, in an Amendment dated May 9, 2008, Reserve quoted language from Bruce Bent II's declaration from February 27, 2007, that stated that the first use in commerce was October 23, 1997.

156. Upon information and belief, had the Examiner of the application that led to the issuance of the '350 Patent known that the Reserve Insured Deposits program was available as early as August 1997, the Examiner could have maintained his rejections under 35 U.S.C. § 102(b). Thus, this material misrepresentation evidences an intent to deceive the USPTO and constitutes inequitable conduct, which renders the '350 Patent unenforceable.

C. Failure to Disclose the Original 1983 CMA/ISA Service

157. Upon information and belief, the Island Plaintiffs, named inventors, or attorneys, agents, or representatives of the Island Plaintiffs who were associated with the prosecution of the

applications that matured into the '286, '551 and '350 Patents and other related applications, and in particular Bruce Bent and Bruce Bent II, knowingly, and with the intent to deceive the USPTO, failed to disclose material information regarding the Insured Savings Account feature in Merrill Lynch's Cash Management Account Service.

158. Upon information and belief, the first deposit sweep service was developed and offered by Merrill Lynch, Pierce, Fenner & Smith ("Merrill Lynch"). As a broker-dealer, Merrill Lynch offered this service to its brokerage customers at least as early as 1983 as a feature of Merrill Lynch's Cash Management Account ("CMA"), brokerage account with cash management features. Merrill Lynch called this feature the Insured Savings Account ("ISA") (collectively, "Original 1983 CMA/ISA Service"). Upon information and belief, details of the Original 1983 CMA/ISA Service are highly material to several, if not all, of the claim limitations in the '286, '551, and '350 Patents.

159. Upon information and belief, details of the Original 1983 CMA/ISA Service were well-known in the financial industry. Upon information and belief, Bruce Bent and Bruce Bent II, as financial industry insiders, knowingly and intentionally withheld details of the Original 1983 CMA/ISA Service, including, but not limited to, the fact that the Original 1983 CMA/ISA Service tied interest rates to a balance of funds. Upon information and belief, this omission is both material and non-cumulative to all of the claims, including at least the limitation of claim 1 of the '286 Patent that recites: "determining ... a respective interest rate ... based at least in part on the updated balance of funds associated with the client account in the subset." This is a limitation that Reserve used to distinguish claim 1 of the '286 Patent from the prior art during prosecution.

160. Upon information and belief, had the Examiner of the application that led to the issuance of the '286 Patent known that the Original 1983 CMA/ISA Service tied interest rates to a balance of funds, the Examiner could have rejected all of the claims under 35 U.S.C. § 103

using a combination of U.S. Patent No. 4,985,833 and the Original 1983 CMA/ISA Service. Thus, this failure to disclose material information constitutes inequitable conduct, which renders the '286 Patent unenforceable. Under the doctrine of infectious unenforceability, this inequitable conduct during the prosecution of the '286 Patent renders unenforceable the applications that led to the '551 and '350 Patents.

**D. Failure to Disclose And Material Misrepresentations Regarding the Merrill Lynch Banking Advantage Program**

161. Upon information and belief, the Island Plaintiffs, named inventors, or attorneys, agents, or representatives of the Island Plaintiffs who were associated with the prosecution of the applications that matured into the '286, '551 and '350 Patents and other related applications, and in particular Bruce Bent and Bruce Bent II, knowingly, and with the intent to deceive the USPTO, failed to disclose material information regarding the Merrill Lynch Banking Advantage Program.

162. Upon information and belief, at least as early as 1998, Merrill Lynch began developing a second deposit sweep service. Merrill Lynch offered this second service to its brokerage customers at least as early as 2000 under the name Cash Management Account 2.0 ("2000 CMA 2.0 Service").

163. Upon information and belief, at least as early as 2000, Merrill Lynch began offering another related program called the Merrill Lynch Banking Advantage Program ("MLBA Program") as part of the 2000 CMA 2.0 Service. Upon information and belief, details of the MLBA Program are highly material to several, if not all, of the claim limitations in the '286, '551, and '350 Patents.

164. Upon information and belief, the Island Plaintiffs, named inventors, or attorneys, agents, or representatives of the Island Plaintiffs who were associated with the filing and prosecution of the then-pending application that led to the issuance of the '551 Patent, disclosed

two material references regarding the MLBA Program to the USPTO in an IDS on March 3, 2009. In disclosing the two material references, the Island Plaintiffs certified that “to the knowledge of the undersigned, after making reasonable inquiry, no item of information contained in the [IDS] was known to any individual designated in 37 C.F.R. § 1.56(c) more than three months prior to the filing of the [IDS].” Upon information and belief, Bruce Bent II, one of the named inventors of the '286, '551, and '350 Patents, was aware of the MLBA Program long before the filing of the IDS, as evidenced by his comments about the program in a November 2000 article, entitled “Merrill Moves CMA Cash to Bank,” which can be found on page 26 of the periodical, “On Wall Street.”

165. Upon information and belief, the Island Plaintiffs, named inventors, or attorneys, agents, or representatives of the Island Plaintiffs, and in particular Bruce Bent and Bruce Bent II as principals of Reserve, were also aware of the MLBA Program more than three months before the filing of the March 3, 2009 IDS, as evidenced by page 11 of the iMoneyNet Article.

166. Upon information and belief, Bruce Bent II knowingly and intentionally withheld details of the MLBA Program, including, but not limited to, the fact that the MLBA Program tied interest rates to a balance of funds as early as June 2001. Upon information and belief, this omission is both material and non-cumulative to all of the claims, including at least the limitation of claim 1 of the '286 Patent that recites: “determining ... a respective interest rate ... based at least in part on the updated balance of funds associated with the client account in the subset.” This is a limitation that Reserve used to distinguish claim 1 of the '286 Patent from the prior art during prosecution.

167. Upon information and belief, had the Examiner of the application that led to the issuance of the '286 Patent known that the MLBA Program tied interest rates to a balance of funds, the Examiner could have rejected all of the claims under 35 U.S.C. § 103(b) using a combination of U.S. Patent No. 4,985,833 and the MLBA Program. Thus, this failure to disclose

material information constitutes inequitable conduct, which renders the '286 Patent unenforceable. Under the doctrine of infectious unenforceability, this inequitable conduct during the prosecution of the '286 Patent renders unenforceable the applications that led to the '551 and '350 Patents.

E. Failure to Disclose Information Regarding Deposit Sweep Services

168. Upon information and belief, the Island Plaintiffs, named inventors, or attorneys, agents, or representatives of the Island Plaintiffs who were associated with the filing and prosecution of the applications that led to the issuance of the '231 Patent, and in particular Bruce Bent and Bruce Bent II, knowingly and intentionally withheld material information from the USPTO regarding deposit sweep services, including a letter from Michael Bradford (General Counsel for the Federal Reserve Board) dated November 16, 1984 ("the Bradford Letter"). This constitutes inequitable conduct that would render the '231 Patent unenforceable.

169. Upon information and belief, the Bradford Letter was widely disseminated in the financial industry, which leads to the reasonable inference that Bruce Bent and Bruce Bent II were aware of this letter when they designed their original Reserve Insured Deposits program and when the application that led to the issuance of the '231 Patent was filed. Upon information and belief, the Bradford Letter discusses a proposal about how a bank could link a money market deposit account ("MMDA") to a demand deposit account ("DDA") in such a way to avoid the six withdrawal limit of 12 C.F.R. 1204.122 and to provide interest on checking accounts.

170. Upon information and belief, the Bradford Letter is at least material to the limitation of claim 1 in the '231 Patent that recites "... to deposit funds to or withdraw funds from said single insured money market deposit account." This is because in an Office Action Response on September 22, 2000, the Island Plaintiffs argued that claim 1 was patentably distinct over the prior art because it solved the six withdrawal limitation problem that was identified by the prior art. Upon information and belief, the Island Plaintiffs' mechanism for

avoiding the six withdrawal limitation is substantially similar to the proposal described in the Bradford Letter. This failure to disclose the material Bradford Letter constitutes inequitable conduct, which renders the '231 Patent unenforceable.

171. Under the doctrine of infectious unenforceability, this inequitable conduct during the prosecution of the '231 Patent renders unenforceable later-filed applications, including the applications that led to the '286, '551, and '350 Patents.

172. There exists an actual and justiciable controversy between DBTCA and the Island Plaintiffs as to whether the '286, '551 and '350 Patents are unenforceable. This controversy is of sufficient immediacy and reality to warrant the issuance of a declaratory judgment.

173. Pursuant to 28 U.S.C. §§ 2201 and 2202, DBTCA is entitled to a declaratory judgment that the '286, '551, and '350 Patents are unenforceable, and any other relief that the Court deems necessary or proper.

#### **PRAYER FOR RELIEF**

WHEREFORE, DBTCA prays for the following:

- a. A declaration that DBTCA does not infringe any valid claims of the '286, '551 and '350 Patents;
- b. A declaration that each and every claim of the '286, '551, and '350 Patents is invalid;
- c. A declaration that the '286, '551, and '350 Patents are each unenforceable;
- d. Dismissal of all of Island Plaintiffs' claims in their entirety with prejudice;
- e. A judgment that this is an "exceptional case" and an award of DBTCA's reasonable attorneys' fees, expenses, and costs in this action under 35 U.S.C. § 285; and

f. An award of such other relief as the Court may deem appropriate and just under the circumstances.

**DEMAND FOR JURY TRIAL**

DBTCA demands a trial by jury of all issues set forth herein pursuant to Fed. R. Civ. P. 38.

DATED: December 4, 2009

Respectfully Submitted,  
By: s/ Jeffrey A. Finn

Edward G. Poplawski (*admitted pro hac vice*)

Jeffrey A. Finn (*admitted pro hac vice*)

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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

ISLAND INTELLECTUAL PROPERTY  
LLC, LIDS CAPITAL LLC, DOUBLE  
ROCK CORPORATION, and INTRASWEEP  
LLC,

Plaintiffs,

v.

DEUTSCHE BANK TRUST COMPANY  
AMERICAS and TOTAL BANK  
SOLUTIONS, LLC,

Defendants.

Civil Action No. 09 Civ. 2675 (VM) (AJP)

**TOTAL BANK SOLUTIONS, LLC's  
FIRST AMENDED ANSWER TO  
CONSOLIDATED FIRST AMENDED  
COMPLAINT AND  
COUNTERCLAIMS**

**JURY TRIAL DEMANDED**

Total Bank Solutions, LLC ("TBS"), by and through its undersigned attorneys, respectively files this First Amended Answer to the Consolidated First Amended Complaint filed by Plaintiffs Island Intellectual Property LLC ("Island IP"), LIDs Capital LLC ("LIDs Capital"), Double Rock Corporation ("Double Rock"), and Intrasweep LLC ("Intrasweep") (collectively, the "Island Plaintiffs") and Counterclaims against the Island Plaintiffs, as follows.

**FIRST AMENDED ANSWER TO CONSOLIDATED FIRST AMENDED COMPLAINT**

**NATURE OF THE ACTION**

1. TBS admits only that the Island Plaintiffs purport that this is an action for patent infringement in paragraph 1. TBS denies any and all remaining allegations of paragraph 1.

A. TBS admits only that the Island Plaintiffs purport in paragraph 1A of the Consolidated First Amended Complaint that this is an action for patent infringement arising out of, Defendant Deutsche Bank Trust Company Americas ("DBTCA") and Defendant TBS's alleged infringement of U.S. Patent No. 7,509,286. TBS denies any and all remaining allegations of paragraph 1A.

B. TBS admits only that the Island Plaintiffs purport in paragraph 1B of the Consolidated First Amended Complaint that this is an action for patent infringement arising out of Defendant DBTCA's and Defendant TBS's alleged infringement of U.S. Patent No. 7,519,551. TBS denies any and all remaining allegations of paragraph 1B.

C. TBS admits only that the Island Plaintiffs purport in paragraph 1C of the Consolidated First Amended Complaint that this is an action for patent infringement arising out of Defendant DBTCA's and Defendant TBS's alleged infringement of U.S. Patent No. 7,536,350. TBS denies any and all remaining allegations of paragraph 1C.

2. TBS only admits that the Island Plaintiffs purport in paragraph 1 of the Consolidated First Amended Complaint that the Consolidated First Amended Complaint asserts claims. TBS denies any and all remaining allegations of paragraph 2.

A. TBS admits only that the Island Plaintiffs purport in paragraph 2A of the Consolidated First Amended Complaint that the Consolidated First Amended Complaint asserts claims against Defendant DBTCA and Defendant TBS arising from their alleged infringement of Claim 1 of U.S. Patent No. 7,509,286, issued on March 24, 2009, and entitled "Systems and Methods for Money Fund Banking with Flexible Interest Allocation" ("the '286 Patent"). TBS denies any and all remaining allegations of paragraph 2A.

B. TBS denies all allegations of paragraph 2B to the Consolidated First Amended Complaint.

C. TBS admits only that the Island Plaintiffs purport in paragraph 2C of the Consolidated First Amended Complaint that the Consolidated First Amended Complaint asserts claims against Defendant DBTCA, and Defendant TBS arising from their alleged

infringement of Claim 1 of U.S. Patent No. 7,519,551 ("the '551 Patent"). TBS denies any and all remaining allegations of paragraph 2C.

D. TBS admits only that the Island Plaintiffs purport in paragraph 2D of the Consolidated First Amended Complaint that the Consolidated First Amended Complaint asserts claims against Defendant DBTCA and Defendant TBS arising from their alleged infringement of Claim 12 of U.S. Patent No. 7,536,350, issued on May 19, 2009, and entitled "Systems and Methods for Providing Enhanced Account Management Services for Multiple Banks" ("the '350 Patent"). TBS denies any and all remaining allegations of paragraph 2D.

3. Responding to paragraph 3 of the Consolidated First Amended Complaint, TBS admits that purported copies of the '286 Patent, '551 Patent, and '350 Patent were attached to the Consolidated First Amended Complaint. TBS denies any and all remaining allegations of paragraph 3.

#### THE PARTIES

4. Responding to paragraph 4 of the Consolidated First Amended Complaint, TBS, upon information and belief, admits that Island IP is a limited liability company, organized and existing under the laws of the State of Delaware and that its principal place of business is located at 1250 Broadway, Thirty-Second Floor, New York, NY 10001, within this District. TBS denies any and all remaining allegations in paragraph 4.

5. Responding to paragraph 5 of the Consolidated First Amended Complaint, TBS, upon information and belief, admits that LIDs Capital is a limited liability company, organized and existing under the laws of the State of Delaware and that its principal place of business is located at 1250 Broadway, Thirty-Second Floor, New York, NY 10001, within this District. TBS denies any and all remaining allegations in paragraph 5.

6. Responding to paragraph 6 of the Consolidated First Amended Complaint, TBS, upon information and belief, admits that Double Rock is a corporation organized and existing under the laws of the State of New Jersey and that its principal place of business is located at 1250 Broadway, Thirty-Second Floor, New York, NY 10001, within this District. TBS denies any and all remaining allegations in paragraph 6.

7. Responding to paragraph 7 of the Consolidated First Amended Complaint, TBS, upon information and belief, admits that Intrasweep is a limited liability company, organized and existing under the laws of the State of Delaware and that its principal place of business is located at 1250 Broadway, Thirty-Second Floor, New York, NY 10001, within this District. TBS denies any and all remaining allegations in paragraph 7.

8. TBS is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 8 of the Consolidated First Amended Complaint, and, accordingly denies the same.

9. TBS is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 9 of the Consolidated First Amended Complaint, and, accordingly denies the same.

10. TBS is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 10 of the Consolidated First Amended Complaint, and, accordingly denies the same.

11. TBS is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 11 of the Consolidated First Amended Complaint, and, accordingly denies the same.

12. Responding to paragraph 12 of the Consolidated Amended Complaint, TBS admits that TBS is a corporation organized and existing under the laws of the State of New

Jersey and that its principal place of business is located at Three University Plaza, Suite 320, Hackensack, NJ 07601. TBS denies any and all remaining allegations in paragraph 12.

JURISDICTION AND VENUE

13. TBS admits only that paragraph 13 of the Consolidated First Amended Complaint purports that this is an action for patent infringement arising under the patent statutes, 35 U.S.C. § 1 *et seq.* TBS denies any and all remaining allegations in paragraph 13.

14. Responding to paragraph 14 of the Consolidated First Amended Complaint, TBS admits that this Court has subject matter jurisdiction over patent claims under 28 U.S.C. §§ 1331 and 1338(a). TBS denies any and all remaining allegations in paragraph 14.

15. TBS is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 15 of the Consolidated First Amended Complaint, and, accordingly denies the same.

16. TBS is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 16 of the Consolidated First Amended Complaint, and, accordingly denies the same.

17. TBS is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 17 of the Consolidated First Amended Complaint, and, accordingly denies the same.

18. TBS is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 18 of the Consolidated First Amended Complaint, and, accordingly denies the same.

19. Responding to paragraph 19 of the Consolidated Amended Complaint, TBS admits that it is subject to the Court's personal jurisdiction. TBS also admits that it operates

computer and record keeping services for the “Deutsche Bank Insured Deposit Program” (“Deutsche IDP”). TBS denies any and all of the remaining allegations in paragraph 19.

20. Responding to paragraph 20 of the Consolidated Amended Complaint, TBS admits that venue is proper in this Court pursuant to 28 U.S.C. §§ 1391 and 1400(b).

FACTUAL BACKGROUND

21. TBS is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 21 of the Consolidated First Amended Complaint, and, accordingly denies the same.

22. TBS is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 22 of the Consolidated First Amended Complaint, and, accordingly denies the same.

23. TBS is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 23 of the Consolidated First Amended Complaint, and, accordingly denies the same.

24. TBS is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 24 of the Consolidated First Amended Complaint, and, accordingly denies the same.

25. TBS is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 25 of the Consolidated First Amended Complaint, and, accordingly denies the same.

26. TBS is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 26 of the Consolidated First Amended Complaint, and, accordingly denies the same.

27. TBS is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 27 of the Consolidated First Amended Complaint, and, accordingly denies the same.

28. TBS is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 28 of the Consolidated First Amended Complaint, and, accordingly denies the same.

THE PATENTS-IN-SUIT

29. TBS denies the allegations of paragraph 29 of the Consolidated Amended Complaint.

30. TBS denies the allegations of paragraph 30 of the Consolidated Amended Complaint.

31. TBS denies the allegations of paragraph 31 of the Consolidated Amended Complaint.

32. Responding to paragraph 32 of the Consolidated First Amended Complaint, upon information and belief, TBS admits that Island IP is a wholly-owned subsidiary of Double Rock and that it is the owner of all rights, title and interest in the '286 Patent, the '551 Patent, and the '350 Patent. TBS denies any and all remaining allegations of paragraph 32.

33. Responding to paragraph 33 of the Consolidated First Amended Complaint, TBS, upon information and belief, admits that LIDs Capital is a wholly-owned subsidiary of Double Rock. TBS is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of paragraph 33 of the Consolidated First Amended Complaint, and, accordingly denies the same.

34. Responding to paragraph 34 of the Consolidated First Amended Complaint, TBS, upon information and belief, admits that Intrasweep is a wholly-owned subsidiary of Double Rock. TBS is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 34 of the Consolidated First Amended Complaint, and, accordingly denies the same.

35. TBS is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 35 of the Consolidated First Amended Complaint, and, accordingly denies the same.

THE PROMONTORY AND DREYFUS INFRINGING PRODUCTS

36. TBS is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 36 of the Consolidated First Amended Complaint, and, accordingly denies the same.

37. TBS is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 37 of the Consolidated First Amended Complaint, and, accordingly denies the same.

38. TBS is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 38 of the Consolidated First Amended Complaint, and, accordingly denies the same.

39. TBS is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 39 of the Consolidated First Amended Complaint, and, accordingly denies the same.



40. TBS is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 40 of the Consolidated First Amended Complaint, and, accordingly denies the same.

41. TBS is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 41 of the Consolidated First Amended Complaint, and, accordingly denies the same.

42. TBS is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 42 of the Consolidated First Amended Complaint, and, accordingly denies the same.

43. TBS is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 43 of the Consolidated First Amended Complaint, and, accordingly denies the same.

**THE DEUTSCHE DEFENDANTS ALLEGEDLY INFRINGING PRODUCTS**

44. Responding to paragraph 44 of the Consolidated First Amended Complaint, TBS admits that it operates Deutsche IDP within the United States. TBS denies any and all remaining allegations of paragraph 44.

45. Responding to paragraph 45 of the Consolidated First Amended Complaint, TBS admits that TBS is a financial data processing company that provides the computer and record keeping services for the Deutsche IDP. TBS denies any and all remaining allegations of paragraph 45.

46. TBS denies the allegations of paragraph 46 to the Consolidated First Amended Complaint.

47. Responding to paragraph 47 of the Consolidated First Amended Complaint, TBS admits that it does not have a license or other authorization from any of the Island Plaintiffs to practice the claims set forth in the '286 Patent. TBS denies any and all remaining allegations in paragraph 47.

48. TBS denies the allegations of paragraph 48 to the Consolidated First Amended Complaint.

49. Responding to paragraph 49 of the Consolidated First Amended Complaint, TBS admits that it does not have a license or other authorization from any of the Island Plaintiffs to practice the claims set forth in the '551 Patent. TBS denies any and all remaining allegations in paragraph 49.

50. TBS denies the allegations of paragraph 50 to the Consolidated First Amended Complaint.

51. Responding to paragraph 51 of the Consolidated First Amended Complaint, TBS admits that it does not have a license or other authorization from any of the Island Plaintiffs to practice the claims set forth in the '350 Patent. TBS denies any and all remaining allegations in paragraph 51.

52. TBS is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 52 of the Consolidated First Amended Complaint, and, accordingly denies the same.

COUNT ONE

(By Plaintiffs Island IP, LIDs Capital and Double Rock for Patent Infringement by the Defendant Promontory and Defendant MBSC of the '286 Patent)

53. Responding to paragraph 53 of the Consolidated Amended Complaint, TBS admits only that the Island Plaintiffs purport to repeat and reallege the allegations of paragraphs 1 through 52 of their claims and TBS incorporates its responses thereto as if fully set forth herein.

54. TBS is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 54 of the Consolidated First Amended Complaint, and, accordingly denies the same.

55. TBS is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 55 of the Consolidated First Amended Complaint, and, accordingly denies the same.

56. TBS is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 56 of the Consolidated First Amended Complaint, and, accordingly denies the same.

57. TBS is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 57 of the Consolidated First Amended Complaint, and, accordingly denies the same.

COUNT TWO

(By Plaintiffs Island IP, LIDs Capital and Double Rock for Patent Infringement by the Deutsche Defendants of the '286 Patent)

58. Responding to paragraph 58 of the Consolidated Amended Complaint, TBS admits only that the Island Plaintiffs purport to repeat and reallege the allegations of paragraphs

1 through 52 of their claims and TBS incorporates its responses thereto as if fully set forth herein.

59. TBS denies the allegations of paragraph 59 to the Consolidated First Amended Complaint.

60. TBS denies the allegations of paragraph 60 to the Consolidated First Amended Complaint.

61. TBS denies the allegations of paragraph 61 to the Consolidated First Amended Complaint.

62. TBS denies the allegations of paragraph 62 to the Consolidated First Amended Complaint.

### COUNT THREE

#### (By Plaintiffs Island IP, LIDs Capital and Double Rock for Patent Infringement by Defendant Promontory of the '551 Patent)

63. Responding to paragraph 63 of the Consolidated Amended Complaint, TBS admits only that the Island Plaintiffs purport to repeat and reallege the allegations of paragraphs 1 through 52 of their claims and TBS incorporates its responses thereto as if fully set forth herein.

64. TBS is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 64 of the Consolidated First Amended Complaint, and, accordingly denies the same.

65. TBS is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 65 of the Consolidated First Amended Complaint, and, accordingly denies the same.

66. TBS is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 66 of the Consolidated First Amended Complaint, and, accordingly denies the same.

67. TBS is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 67 of the Consolidated First Amended Complaint, and, accordingly denies the same.

68. TBS is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 68 of the Consolidated First Amended Complaint, and, accordingly denies the same.

#### COUNT FOUR

(By Plaintiffs Island IP, LIDs Capital and Double Rock for Patent Infringement by the Deutsche Defendants of the '286 Patent)

69. Responding to paragraph 69 of the Consolidated Amended Complaint, TBS admits only that the Island Plaintiffs purport to repeat and reallege the allegations of paragraphs 1 through 52 of their claims and TBS incorporates its responses thereto as if fully set forth herein.

70. TBS denies the allegations of paragraph 70 to the Consolidated First Amended Complaint.

71. TBS denies the allegations of paragraph 71 to the Consolidated First Amended Complaint.

72. Responding to paragraph 72 of the Consolidated Amended Complaint, TBS admits that it has been on notice of a published Application which matured into the '551 Patent

since at least on or about October 18, 2005. TBS denies any and all remaining allegations of paragraph 72.

73. TBS denies the allegations of paragraph 73 to the Consolidated First Amended Complaint.

74. TBS denies the allegations of paragraph 74 to the Consolidated First Amended Complaint.

COUNT FIVE

(By Plaintiffs Island IP, LIDs Capital and Double Rock for Patent Infringement by the Deutsche Defendants of the '286 Patent)

75. Responding to paragraph 75 of the Consolidated Amended Complaint, TBS admits only that the Island Plaintiffs purport to repeat and reallege the allegations of paragraphs 1 through 52 of their claims and TBS incorporates its responses thereto as if fully set forth herein.

76. TBS denies the allegations of paragraph 76 to the Consolidated First Amended Complaint.

77. TBS denies the allegations of paragraph 77 to the Consolidated First Amended Complaint.

78. TBS denies the allegations of paragraph 78 to the Consolidated First Amended Complaint.

79. TBS denies the allegations of paragraph 79 to the Consolidated First Amended Complaint.

PRAYER FOR RELIEF

I. WITH RESPECT TO THE '286 PATENT

- A. TBS denies that the Island Plaintiffs are entitled to the relief requested in Paragraph I.A.
- B. TBS denies that the Island Plaintiffs are entitled to the relief requested in Paragraph I.B.
- C. TBS denies that the Island Plaintiffs are entitled to the relief requested in Paragraph I.C.
- D. TBS denies that the Island Plaintiffs are entitled to the relief requested in Paragraph I.D.

II. WITH RESPECT TO THE '551 PATENT

- A. TBS denies that the Island Plaintiffs are entitled to the relief requested in Paragraph II.A.
- B. TBS denies that the Island Plaintiffs are entitled to the relief requested in Paragraph II.B.
- C. TBS denies that the Island Plaintiffs are entitled to the relief requested in Paragraph II.C.
- D. TBS denies that the Island Plaintiffs are entitled to the relief requested in Paragraph II.D.
- E. TBS denies that the Island Plaintiffs are entitled to the relief requested in Paragraph II.E.

III. WITH RESPECT TO THE '350 PATENT

- A. TBS denies that the Island Plaintiffs are entitled to the relief requested in Paragraph III.A.
- B. TBS denies that the Island Plaintiffs are entitled to the relief requested in Paragraph III.B.
- C. TBS denies that the Island Plaintiffs are entitled to the relief requested in Paragraph III.C.
- D. TBS denies that the Island Plaintiffs are entitled to the relief requested in Paragraph III.D.

80. TBS admits that the Island Plaintiffs have requested a trial by jury in paragraph 80 of the Consolidated First Amended Complaint.

AFFIRMATIVE DEFENSES

First Affirmative Defense (Non-Infringement)

81. The Island Plaintiffs are not entitled to any relief against TBS because TBS is not infringing and has not infringed, directly, by inducement, contributorily or in any way, any valid claims of the '286, '551, and '350 Patents.

Second Affirmative Defense (Invalidity)

82. Upon information and belief, one or more claims of the '286, '551, and '350 Patents are invalid at least for failure to meet the requirements of Title 35 of the United States Code, particularly, but not limited to, 35 U.S.C. §§ 101, 102, 103, and 112.



Third Affirmative Defense (Unenforceability)

83. Upon information and belief, and on the basis of conduct in the United States Patent and Trademark Office (“USPTO”), during the prosecution of the applications that matured into the ’286, ’551, and ’350 Patents, the Island Plaintiffs are barred from asserting the ’286, ’551, and ’350 Patents against TBS for having engaged in inequitable conduct.

A. Failure to Disclose Details of the Reserve Insured Deposits Program

84. Upon information and belief, the Island Plaintiffs, named inventors, or attorneys, agents, or representatives of the Island Plaintiffs who were associated with the prosecution of the applications that matured into the ’286, ’551 and ’350 Patents and other related applications, and in particular Bruce Bent and Bruce Bent II, knowingly and intentionally failed to disclose and made material misrepresentations regarding the prior sale and public use of the Reserve Insured Deposits program. These failures to disclose and material misrepresentations were performed with an intent to deceive the USPTO.

85. The application that led to the issuance of the ’286 Patent, which was filed on April 11, 2003, is a continuation-in-part of the application that led to the issuance of the ’350 Patent, which was filed on March 6, 2003, and is also a continuation in part of the application that led to the issuance of the ’551 Patent, which was filed on February 8, 2002. The application that led to the issuance of the ’350 Patent is also a continuation-in-part of the application that led to the issuance of the ’551 Patent. The applications that led to the issuance of the ’286, ’551, and ’350 Patents, respectively, are also all continuations-in-part of U.S. Application No. 09/677,535 (“the ’535 Application”), which was filed on October 2, 2000. The ’535 Application and the application that led to the issuance of the ’551 Patent also are continuations-in-part of the application that led to the issuance of U.S. Patent No. 6,374,231, which was filed on October 21, 1998 (“the ’231 Patent”). The ’286, ’551, and ’350 Patents are therefore related to both the ’535 Application and the ’231 Patent.

86. Upon information and belief, Double Rock was formerly known as the Reserve Management Corporation (“Reserve”). Upon information and belief, the principals of Reserve were also the principals of a related entity, called The Reserve Funds. Upon information and belief, The Reserve Funds offered a program called Reserve Insured Deposits. Upon information and belief, the Reserve Insured Deposits program is prior art under 35 U.S.C. § 102(b) to the ’231 Patent.

87. On September 21, 2001, Reserve filed a trademark application (Ser. No. 76/315,660) with the USPTO for the mark RESERVE INSURED DEPOSITS. Reserve’s application specified that the mark was for “financial services, namely, providing insured money market account services,” with a first use in commerce on October 9, 1997. On October 18, 2006, Reserve filed a request to change the date of the first use in commerce to December 31, 1997. In support of its request, Reserve attached an October 17, 2006 declaration by Bruce Bent II, which stated that the first use in commerce was actually October 23, 1997.

88. During the prosecution of the ’286, ’551, and ’350 Patents, as well as during the prosecution of the ’231 Patent, the Island Plaintiffs, named inventors, or attorneys, agents, or representatives of the Island Plaintiffs who were associated with the prosecution of these patents, submitted an information disclosure statement (“IDS”), in or around March 2007, disclosing an advertisement in the October 1997 issue of the periodical “Mutual Funds” by Reserve that advertised an “FDIC insured money market account with free, unlimited, no minimum checking.” Upon information and belief, this advertisement was circulated as early as September 8, 1997. These IDSs also included a February 27, 2007 declaration by Bruce Bent II, who was the senior vice president of Reserve at the time and is a named inventor of the ’231, ’286, ’551, and ’350 Patents, that stated that the first use in commerce of the Reserve Insured Deposits program was actually October 23, 1997 and that the October 9, 2007 date that was used in the trademark application was an error.

89. Upon information and belief, Bruce Bent II's February 27, 2007 declaration referred to and attached a true copy of the "Mutual Funds" advertisement. Upon information and belief, this advertisement advertised that the Reserve Insured Deposits Accounts offered "high interest (4.26% as of 8/6/97)."

90. Upon information and belief, the Reserve Insured Deposits program was in use in commerce as early as August 1997. On page 10 of a 2004 report entitled "Brokerage Cash Sweep Options: The Shift from Money Funds to FDIC-Insured Bank Deposit Accounts," published by iMoneyNet and sponsored by The Reserve Funds ("iMoneyNet Article"), the report states that "Money fund-inventor The Reserve Funds introduced Reserve Insured Deposits® in August 1997."

91. Upon information and belief, the Reserve Insured Deposits program, as it existed in August 1997, was within the scope of the '231 Patent and was put on sale and in public use more than one year prior to the filing date of October 21, 1998. Upon information and belief, the Reserve Insured Deposits program, as it existed in August 1997, is material to all of the claims and all of the limitations of the '231 Patent, including at least the limitation of claim 1 of the '231 Patent that recites, "determining the net transaction aggregated across all said demand account deposits and withdrawals on a regular periodic basis." Upon information and belief, had the Examiner of the application that led to the issuance of the '231 Patent known that the Reserve Insured Deposits program was available as early as August 1997, the Examiner could have rejected all of the claims in the application that led to the issuance of the '231 Patent under 35 U.S.C. § 102(b).

92. Upon information and belief, the Island Plaintiffs, named inventors, or attorneys, agents, or representatives of the Island Plaintiffs who were associated with the prosecution of the '231 Patent, and in particular Bruce Bent and Bruce Bent II as principals of Reserve, knowingly and intentionally failed to disclose and made material misrepresentations regarding the sales and

public uses of the Reserve Insured Deposits program prior to October 21, 1997. Upon information and belief, the failures to disclose information and material misrepresentations, including, but not limited to, the examples provided in paragraphs 84 through 91, were made with an intent to deceive the USPTO and thus constitute inequitable conduct that would render the '231 Patent unenforceable. Under the doctrine of infectious unenforceability, this inequitable conduct during the prosecution of the '231 Patent renders unenforceable later-filed applications, including the applications that led to the '286, '551, and '350 Patents.

**B. Material Misrepresentations Regarding The First Use In Commerce Of The Reserve Insured Deposits Program**

93. Upon information and belief, the Island Plaintiffs, named inventors, or attorneys, agents, or representatives of the Island Plaintiffs who were associated with the filing and prosecution of the application that led to the issuance of the '286, '551, and '350 Patents and other related applications, and in particular Bruce Bent II, knowingly and intentionally made material misrepresentations to the USPTO with the intent to deceive the USPTO regarding the date of the first use in commerce of the Reserve Insured Deposits program.

94. Upon information and belief, on March 10, 2008, the USPTO rejected all pending claims in the application that eventually led to the issuance of the '286 Patent under 35 U.S.C. § 102(b), citing a prior public use of the Reserve Insured Deposits program. In response, in an Amendment dated May 9, 2008, Reserve quoted language from Bruce Bent II's declaration from February 27, 2007, that stated that the first use in commerce was October 23, 1997.

95. Upon information and belief, had the Examiner of the application that led to the issuance of the '286 Patent known that the Reserve Insured Deposits program was available as early as August 1997, the Examiner could have maintained his rejections under 35 U.S.C. § 102(b). Thus, this material misrepresentation evidences an intent to deceive the USPTO and constitutes inequitable conduct, which renders the '286 Patent unenforceable.

96. Upon information and belief, on April 5, 2007, the USPTO rejected all pending claims in the application that eventually led to the issuance of the '551 Patent under 35 U.S.C. § 102(b), and requested information regarding the prior public use of the Reserve Insured Deposits program. In response, in an Amendment dated October 5, 2007, Reserve quoted language from Bruce Bent II's declaration from February 27, 2007, that stated that the first use in commerce was October 23, 1997.

97. Upon information and belief, had the Examiner of the application that led to the issuance of the '551 Patent known that the Reserve Insured Deposits program was available as early as August 1997, the Examiner could have rejected all of the claims under 35 U.S.C. § 102(b).

98. Upon information and belief, the Reserve Insured Deposits program, as it existed in August 1997, is material to all of the claims and all of the limitations of the '551 Patent, including at least limitation (d) of claim 1 of the '551 Patent, which states that funds may be withdrawn from a money market deposit account "more than six (6) times during a month while preserving an insured and interest-bearing status of the FDIC-insured and interest-bearing aggregated deposit account held at the one bank," which is a limitation that the Examiner could not find in the prior art. Upon information and belief, had the Examiner of the application that led to the issuance of the '551 Patent known that the Reserve Insured Deposits program was available as early as August 1997, the Examiner could have rejected all of the claims under 35 U.S.C. § 103 using U.S. Patent No. 4,985,833 in view of the Reserve Insured Deposits program. Thus, this material misrepresentation evidences an intent to deceive the USPTO and constitutes inequitable conduct, which renders the '551 Patent unenforceable.

99. Upon information and belief, on March 10, 2008, the USPTO rejected all pending claims in the application that eventually led to the issuance of the '350 Patent under 35 U.S.C. § 102(b), citing a prior public use of the Reserve Insured Deposits program. In response, in an

Amendment dated May 9, 2008, Reserve quoted language from Bruce Bent II's declaration from February 27, 2007, that stated that the first use in commerce was October 23, 1997.

100. Upon information and belief, had the Examiner of the application that led to the issuance of the '350 Patent known that the Reserve Insured Deposits program was available as early as August 1997, the Examiner could have maintained his rejections under 35 U.S.C. § 102(b). Thus, this material misrepresentation evidences an intent to deceive the USPTO and constitutes inequitable conduct, which renders the '350 Patent unenforceable.

C. Failure to Disclose the Original 1983 CMA/ISA Service

101. Upon information and belief, the Island Plaintiffs, named inventors, or attorneys, agents, or representatives of the Island Plaintiffs who were associated with the prosecution of the applications that matured into the '286, '551 and '350 Patents and other related applications, and in particular Bruce Bent and Bruce Bent II, knowingly, and with the intent to deceive the USPTO, failed to disclose material information regarding the Insured Savings Account feature in Merrill Lynch's Cash Management Account Service.

102. Upon information and belief, the first deposit sweep service was developed and offered by Merrill Lynch, Pierce, Fenner & Smith ("Merrill Lynch"). As a broker-dealer, Merrill Lynch offered this service to its brokerage customers at least as early as 1983 as a feature of Merrill Lynch's Cash Management Account ("CMA"), brokerage account with cash management features. Merrill Lynch called this feature the Insured Savings Account ("ISA") (collectively, "Original 1983 CMA/ISA Service"). Upon information and belief, details of the Original 1983 CMA/ISA Service are highly material to several, if not all, of the claim limitations in the '286, '551, and '350 Patents.

103. Upon information and belief, details of the Original 1983 CMA/ISA Service were well-known in the financial industry. Upon information and belief, Bruce Bent and Bruce Bent II, as financial industry insiders, knowingly and intentionally withheld details of the Original

1983 CMA/ISA Service, including, but not limited to, the fact that the Original 1983 CMA/ISA Service tied interest rates to a balance of funds. Upon information and belief, this omission is both material and non-cumulative to all of the claims, including at least the limitation of claim 1 of the '286 Patent that recites: "determining ... a respective interest rate ... based at least in part on the updated balance of funds associated with the client account in the subset." This is a limitation that Reserve used to distinguish claim 1 of the '286 Patent from the prior art during prosecution.

104. Upon information and belief, had the Examiner of the application that led to the issuance of the '286 Patent known that the Original 1983 CMA/ISA Service tied interest rates to a balance of funds, the Examiner could have rejected all of the claims under 35 U.S.C. § 103 using a combination of U.S. Patent No. 4,985,833 and the Original 1983 CMA/ISA Service. Thus, this failure to disclose material information constitutes inequitable conduct, which renders the '286 Patent unenforceable. Under the doctrine of infectious unenforceability, this inequitable conduct during the prosecution of the '286 Patent renders unenforceable the applications that led to the '551 and '350 Patents.

D. Failure to Disclose And Material Misrepresentations Regarding the Merrill Lynch Banking Advantage Program

105. Upon information and belief, the Island Plaintiffs, named inventors, or attorneys, agents, or representatives of the Island Plaintiffs who were associated with the prosecution of the applications that matured into the '286, '551 and '350 Patents and other related applications, and in particular Bruce Bent and Bruce Bent II, knowingly, and with the intent to deceive the USPTO, failed to disclose material information regarding the Merrill Lynch Banking Advantage Program.

106. Upon information and belief, at least as early as 1998, Merrill Lynch began developing a second deposit sweep service. Merrill Lynch offered this second service to its

brokerage customers at least as early as 2000 under the name Cash Management Account 2.0 ("2000 CMA 2.0 Service").

107. Upon information and belief, at least as early as 2000, Merrill Lynch began offering another related program called the Merrill Lynch Banking Advantage Program ("MLBA Program") as part of the 2000 CMA 2.0 Service. Upon information and belief, details of the MLBA Program are highly material to several, if not all, of the claim limitations in the '286, '551, and '350 Patents.

108. Upon information and belief, the Island Plaintiffs, named inventors, or attorneys, agents, or representatives of the Island Plaintiffs who were associated with the filing and prosecution of the then-pending application that led to the issuance of the '551 Patent, disclosed two material references regarding the MLBA Program to the USPTO in an IDS on March 3, 2009. In disclosing the two material references, the Island Plaintiffs certified that "to the knowledge of the undersigned, after making reasonable inquiry, no item of information contained in the [IDS] was known to any individual designated in 37 C.F.R. § 1.56(c) more than three months prior to the filing of the [IDS]." Upon information and belief, Bruce Bent II, one of the named inventors of the '286, '551, and '350 Patents, was aware of the MLBA Program long before the filing of the IDS, as evidenced by his comments about the program in a November 2000 article, entitled "Merrill Moves CMA Cash to Bank," which can be found on page 26 of the periodical, "On Wall Street."

109. Upon information and belief, the Island Plaintiffs, named inventors, or attorneys, agents, or representatives of the Island Plaintiffs, and in particular Bruce Bent and Bruce Bent II as principals of Reserve, were also aware of the MLBA Program more than three months before the filing of the March 3, 2009 IDS, as evidenced by page 11 of the iMoneyNet Article.

110. Upon information and belief, Bruce Bent II knowingly and intentionally withheld details of the MLBA Program, including, but not limited to, the fact that the MLBA Program tied



interest rates to a balance of funds as early as June 2001. Upon information and belief, this omission is both material and non-cumulative to all of the claims, including at least the limitation of claim 1 of the '286 Patent that recites: "determining ... a respective interest rate ... based at least in part on the updated balance of funds associated with the client account in the subset." This is a limitation that Reserve used to distinguish claim 1 of the '286 Patent from the prior art during prosecution.

111. Upon information and belief, had the Examiner of the application that led to the issuance of the '286 Patent known that the MLBA Program tied interest rates to a balance of funds, the Examiner could have rejected all of the claims under 35 U.S.C. § 103(b) using a combination of U.S. Patent No. 4,985,833 and the MLBA Program. Thus, this failure to disclose material information constitutes inequitable conduct, which renders the '286 Patent unenforceable. Under the doctrine of infectious unenforceability, this inequitable conduct during the prosecution of the '286 Patent renders unenforceable the applications that led to the '551 and '350 Patents.

E. Failure to Disclose Information Regarding Deposit Sweep Services

112. Upon information and belief, the Island Plaintiffs, named inventors, or attorneys, agents, or representatives of the Island Plaintiffs who were associated with the filing and prosecution of the applications that led to the issuance of the '231 Patent, and in particular Bruce Bent and Bruce Bent II, knowingly and intentionally withheld material information from the USPTO regarding deposit sweep services, including a letter from Michael Bradford (General Counsel for the Federal Reserve Board) dated November 16, 1984 ("the Bradford Letter"). This constitutes inequitable conduct that would render the '231 Patent unenforceable.

113. Upon information and belief, the Bradford Letter was widely disseminated in the financial industry, which leads to the reasonable inference that Bruce Bent and Bruce Bent II were aware of this letter when they designed their original Reserve Insured Deposits program

and when the application that led to the issuance of the '231 Patent was filed. Upon information and belief, the Bradford Letter discusses a proposal about how a bank could link a money market deposit account ("MMDA") to a demand deposit account ("DDA") in such a way to avoid the six withdrawal limit of 12 C.F.R. 1204.122 and to provide interest on checking accounts.

114. Upon information and belief, the Bradford Letter is at least material to the limitation of claim 1 in the '231 Patent that recites "... to deposit funds to or withdraw funds from said single insured money market deposit account." This is because in an Office Action Response on September 22, 2000, the Island Plaintiffs argued that claim 1 was patentably distinct over the prior art because it solved the six withdrawal limitation problem that was identified by the prior art. Upon information and belief, the Island Plaintiffs' mechanism for avoiding the six withdrawal limitation is substantially similar to the proposal described in the Bradford Letter. This failure to disclose the material Bradford Letter constitutes inequitable conduct, which renders the '231 Patent unenforceable.

115. Under the doctrine of infectious unenforceability, this inequitable conduct during the prosecution of the '231 Patent renders unenforceable later-filed applications, including the applications that led to the '286, '551, and '350 Patents.

### **TBS'S FIRST AMENDED COUNTERCLAIMS**

#### **THE PARTIES**

116. TBS is a corporation organized and existing under the laws of the State of New Jersey. TBS's principal place of business is located at Three University Plaza, Suite 320, Hackensack, NJ 07601.

117. Upon information and belief, Island IP is a limited liability company organized and existing under the laws of the State of Delaware. Island IP's principal place of business is located at 1250 Broadway, Thirty-Second Floor, New York, NY 10001, within this District.

118. Upon information and belief, LIDs Capital is a limited liability company, organized and existing under the laws of the State of Delaware. LIDs Capital's principal place of business is located at 1250 Broadway, Thirty-Second Floor, New York, NY 10001, within this District.

119. Upon information and belief, Double Rock is corporation, organized and existing under the laws of the State of New Jersey. Double Rock's principal place of business is located at 1250 Broadway, Thirty-Second Floor, New York, NY 10001, within this District.

120. Upon information and belief, Intrasweep is a limited liability company, organized and existing under the laws of the State of Delaware. Intrasweep's principal place of business is located at 1250 Broadway, Thirty-Second Floor, New York, NY 10001, within this District.

#### JURISDICTION AND VENUE

121. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331, 1338(a), 2201 and 2202.

122. Upon information and belief, Island IP is subject to personal jurisdiction in this judicial district because Island IP regularly conducts and transacts business in this judicial district and because its principal place of business is within this judicial district.

123. Upon information and belief, LIDs Capital is subject to personal jurisdiction in this judicial district because LIDs Capital regularly conducts and transacts business in this judicial district and because its principal place of business is within this judicial district.

124. Upon information and belief, Double Rock is subject to personal jurisdiction in this judicial district because Double Rock regularly conducts and transacts business in this judicial district and because its principal place of business is within this judicial district.

125. Upon information and belief, Intrasweep is subject to personal jurisdiction in this judicial district because Intrasweep regularly conducts and transacts business in this judicial district and because its principal place of business is within this judicial district.

126. Venue is appropriate in this judicial district pursuant to 28 U.S.C. §§ 1391 and 1400(b).

### CLAIMS FOR RELIEF

#### COUNT I

#### (Declaratory Judgment of Non-Infringement of U.S. Patent Nos. 7,509,286, 7,519,551, and 7,536,350)

127. The allegations contained in paragraphs 116 through 126 of this counterclaim are incorporated by reference herein with the same force and effect as if set forth in full below.

128. Upon information and belief, Island IP is the owner of all right, title and interest in and to the '286, '551 and '350 Patents.

129. TBS does not directly infringe, contribute to the infringement of, or induce infringement of, any valid claims of the '286, '551, and '350 Patents.

130. The Island Plaintiffs have charged in their Consolidated First Amended Complaint that TBS has been and still is infringing the '286, '551 and '350 Patents in light of its activities in connection with the Deutsche IDP.

131. TBS denies that TBS has been or is infringing, directly or indirectly, any of the claims of the '286, '551 and '350 Patents or otherwise engaging in any wrongdoing with respect to such patents. TBS has averred, and continues to aver, that it has not infringed and is not presently infringing any valid or enforceable claims contained in the '286, '551 and '350 Patents

and it is not liable for damages, injunctive or other relief arising from any such alleged infringement.

132. There exists an actual and justiciable controversy between TBS and the Island Plaintiffs as to whether TBS infringes any claims of the '286, '551 and '350 Patents. This controversy is of sufficient immediacy and reality to warrant the issuance of a declaratory judgment.

133. Pursuant to 28 U.S.C. §§ 2201 and 2202, TBS is entitled to a declaratory judgment that it does not infringe any claim of the '286, '551, and '350 Patents.

## COUNT II

### (Declaratory Judgment of Invalidity of U.S. Patent Nos. 7,509,286, 7,519,551, and 7,536,350)

134. The allegations contained in paragraphs 116 through 133 of this counterclaim are incorporated by reference herein with the same force and effect as if set forth in full below.

135. Each and every claim of the '286, '551, and '350 Patents is invalid for failure to meet one or more of the requirements of Title 35 of the United States Code, particularly, but not limited to, 35 U.S.C. §§ 101, 102, 103, and 112.

136. There exists an actual and justiciable controversy between TBS and the Island Plaintiffs as to whether each and every claim of the '286, '551 and '350 Patents is invalid. This controversy is of sufficient immediacy and reality to warrant the issuance of a declaratory judgment.

137. Pursuant to 28 U.S.C. §§ 2201 and 2202, TBS is entitled to a declaratory judgment that each and every claim of the '286, '551, and '350 Patents is invalid.

COUNT III

(Declaratory Judgment of Unenforceability of U.S. Patent Nos. 7,509,286, 7,519,551, and 7,536,350)

138. The allegations contained in paragraphs 116 through 137 of this counterclaim are incorporated by reference herein with the same force and effect as if set forth in full below.

139. Upon information and belief, and on the basis of conduct in the United States Patent and Trademark Office (“USPTO”), during the prosecution of the applications that matured into the ’286, ’551, and ’350 Patents, the Island Plaintiffs are barred from asserting the ’286, ’551, and ’350 Patents against TBS for having engaged in inequitable conduct.

A. Failure to Disclose Details of the Reserve Insured Deposits Program

140. Upon information and belief, the Island Plaintiffs, named inventors, or attorneys, agents, or representatives of the Island Plaintiffs who were associated with the prosecution of the applications that matured into the ’286, ’551 and ’350 Patents and other related applications, and in particular Bruce Bent and Bruce Bent II, knowingly and intentionally failed to disclose and made material misrepresentations regarding the prior sale and public use of the Reserve Insured Deposits program. These failures to disclose and material misrepresentations were performed with an intent to deceive the USPTO.

141. The application that led to the issuance of the ’286 Patent, which was filed on April 11, 2003, is a continuation-in-part of the application that led to the issuance of the ’350 Patent, which was filed on March 6, 2003, and is also a continuation in part of the application that led to the issuance of the ’551 Patent, which was filed on February 8, 2002. The application that led to the issuance of the ’350 Patent is also a continuation-in-part of the application that led to the issuance of the ’551 Patent. The applications that led to the issuance of the ’286, ’551, and ’350 Patents, respectively, are also all continuations-in-part of U.S. Application No. 09/677,535 (“the ’535 Application”), which was filed on October 2, 2000. The ’535 Application and the

application that led to the issuance of the '551 Patent also are continuations-in-part of the application that led to the issuance of U.S. Patent No. 6,374,231, which was filed on October 21, 1998 ("the '231 Patent"). The '286, '551, and '350 Patents are therefore related to both the '535 Application and the '231 Patent.

142. Upon information and belief, Double Rock was formerly known as the Reserve Management Corporation ("Reserve"). Upon information and belief, the principals of Reserve were also the principals of a related entity, called The Reserve Funds. Upon information and belief, The Reserve Funds offered a program called Reserve Insured Deposits. Upon information and belief, the Reserve Insured Deposits program is prior art under 35 U.S.C. § 102(b) to the '231 Patent.

143. On September 21, 2001, Reserve filed a trademark application (Ser. No. 76/315,660) with the USPTO for the mark RESERVE INSURED DEPOSITS. Reserve's application specified that the mark was for "financial services, namely, providing insured money market account services," with a first use in commerce on October 9, 1997. On October 18, 2006, Reserve filed a request to change the date of the first use in commerce to December 31, 1997. In support of its request, Reserve attached an October 17, 2006 declaration by Bruce Bent II, which stated that the first use in commerce was actually October 23, 1997.

144. During the prosecution of the '286, '551, and '350 Patents, as well as during the prosecution of the '231 Patent, the Island Plaintiffs, named inventors, or attorneys, agents, or representatives of the Island Plaintiffs who were associated with the prosecution of these patents, submitted an information disclosure statement ("IDS"), in or around March 2007, disclosing an advertisement in the October 1997 issue of the periodical "Mutual Funds" by Reserve that advertised an "FDIC insured money market account with free, unlimited, no minimum checking." Upon information and belief, this advertisement was circulated as early as September 8, 1997. These IDSs also included a February 27, 2007 declaration by Bruce Bent II, who was

the senior vice president of Reserve at the time and is a named inventor of the '231, '286, '551, and '350 Patents, that stated that the first use in commerce of the Reserve Insured Deposits program was actually October 23, 1997 and that the October 9, 2007 date that was used in the trademark application was an error.

145. Upon information and belief, Bruce Bent II's February 27, 2007 declaration referred to and attached a true copy of the "Mutual Funds" advertisement. Upon information and belief, this advertisement advertised that the Reserve Insured Deposits Accounts offered "high interest (4.26% as of 8/6/97)."

146. Upon information and belief, the Reserve Insured Deposits program was in use in commerce as early as August 1997. On page 10 of a 2004 report entitled "Brokerage Cash Sweep Options: The Shift from Money Funds to FDIC-Insured Bank Deposit Accounts," published by iMoneyNet and sponsored by The Reserve Funds ("iMoneyNet Article"), the report states that "Money fund-inventor The Reserve Funds introduced Reserve Insured Deposits® in August 1997."

147. Upon information and belief, the Reserve Insured Deposits program, as it existed in August 1997, was within the scope of the '231 Patent and was put on sale and in public use more than one year prior to the filing date of October 21, 1998. Upon information and belief, the Reserve Insured Deposits program, as it existed in August 1997, is material to all of the claims and all of the limitations of the '231 Patent, including at least the limitation of claim 1 of the '231 Patent that recites, "determining the net transaction aggregated across all said demand account deposits and withdrawals on a regular periodic basis." Upon information and belief, had the Examiner of the application that led to the issuance of the '231 Patent known that the Reserve Insured Deposits program was available as early as August 1997, the Examiner could have rejected all of the claims in the application that led to the issuance of the '231 Patent under 35 U.S.C. § 102(b).



148. Upon information and belief, the Island Plaintiffs, named inventors, or attorneys, agents, or representatives of the Island Plaintiffs who were associated with the prosecution of the '231 Patent, and in particular Bruce Bent and Bruce Bent II as principals of Reserve, knowingly and intentionally failed to disclose and made material misrepresentations regarding the sales and public uses of the Reserve Insured Deposits program prior to October 21, 1997. Upon information and belief, the failures to disclose information and material misrepresentations, including, but not limited to, the examples provided in paragraphs 140 through 147, were made with an intent to deceive the USPTO and thus constitute inequitable conduct that would render the '231 Patent unenforceable. Under the doctrine of infectious unenforceability, this inequitable conduct during the prosecution of the '231 Patent renders unenforceable later-filed applications, including the applications that led to the '286, '551, and '350 Patents.

**B. Material Misrepresentations Regarding The First Use In Commerce Of The Reserve Insured Deposits Program**

149. Upon information and belief, the Island Plaintiffs, named inventors, or attorneys, agents, or representatives of the Island Plaintiffs who were associated with the filing and prosecution of the application that led to the issuance of the '286, '551, and '350 Patents and other related applications, and in particular Bruce Bent II, knowingly and intentionally made material misrepresentations to the USPTO with the intent to deceive the USPTO regarding the date of the first use in commerce of the Reserve Insured Deposits program.

150. Upon information and belief, on March 10, 2008, the USPTO rejected all pending claims in the application that eventually led to the issuance of the '286 Patent under 35 U.S.C. § 102(b), citing a prior public use of the Reserve Insured Deposits program. In response, in an Amendment dated May 9, 2008, Reserve quoted language from Bruce Bent II's declaration from February 27, 2007, that stated that the first use in commerce was October 23, 1997.

151. Upon information and belief, had the Examiner of the application that led to the issuance of the '286 Patent known that the Reserve Insured Deposits program was available as

early as August 1997, the Examiner could have maintained his rejections under 35 U.S.C. § 102(b). Thus, this material misrepresentation evidences an intent to deceive the USPTO and constitutes inequitable conduct, which renders the '286 Patent unenforceable.

152. Upon information and belief, on April 5, 2007, the USPTO rejected all pending claims in the application that eventually led to the issuance of the '551 Patent under 35 U.S.C. § 102(b), and requested information regarding the prior public use of the Reserve Insured Deposits program. In response, in an Amendment dated October 5, 2007, Reserve quoted language from Bruce Bent II's declaration from February 27, 2007, that stated that the first use in commerce was October 23, 1997.

153. Upon information and belief, had the Examiner of the application that led to the issuance of the '551 Patent known that the Reserve Insured Deposits program was available as early as August 1997, the Examiner could have rejected all of the claims under 35 U.S.C. § 102(b).

154. Upon information and belief, the Reserve Insured Deposits program, as it existed in August 1997, is material to all of the claims and all of the limitations of the '551 Patent, including at least limitation (d) of claim 1 of the '551 Patent, which states that funds may be withdrawn from a money market deposit account "more than six (6) times during a month while preserving an insured and interest-bearing status of the FDIC-insured and interest-bearing aggregated deposit account held at the one bank," which is a limitation that the Examiner could not find in the prior art. Upon information and belief, had the Examiner of the application that led to the issuance of the '551 Patent known that the Reserve Insured Deposits program was available as early as August 1997, the Examiner could have rejected all of the claims under 35 U.S.C. § 103 using U.S. Patent No. 4,985,833 in view of the Reserve Insured Deposits program. Thus, this material misrepresentation evidences an intent to deceive the USPTO and constitutes inequitable conduct, which renders the '551 Patent unenforceable.

155. Upon information and belief, on March 10, 2008, the USPTO rejected all pending claims in the application that eventually led to the issuance of the '350 Patent under 35 U.S.C. § 102(b), citing a prior public use of the Reserve Insured Deposits program. In response, in an Amendment dated May 9, 2008, Reserve quoted language from Bruce Bent II's declaration from February 27, 2007, that stated that the first use in commerce was October 23, 1997.

156. Upon information and belief, had the Examiner of the application that led to the issuance of the '350 Patent known that the Reserve Insured Deposits program was available as early as August 1997, the Examiner could have maintained his rejections under 35 U.S.C. § 102(b). Thus, this material misrepresentation evidences an intent to deceive the USPTO and constitutes inequitable conduct, which renders the '350 Patent unenforceable.

C. Failure to Disclose the Original 1983 CMA/ISA Service

157. Upon information and belief, the Island Plaintiffs, named inventors, or attorneys, agents, or representatives of the Island Plaintiffs who were associated with the prosecution of the applications that matured into the '286, '551 and '350 Patents and other related applications, and in particular Bruce Bent and Bruce Bent II, knowingly, and with the intent to deceive the USPTO, failed to disclose material information regarding the Insured Savings Account feature in Merrill Lynch's Cash Management Account Service.

158. Upon information and belief, the first deposit sweep service was developed and offered by Merrill Lynch, Pierce, Fenner & Smith ("Merrill Lynch"). As a broker-dealer, Merrill Lynch offered this service to its brokerage customers at least as early as 1983 as a feature of Merrill Lynch's Cash Management Account ("CMA"), brokerage account with cash management features. Merrill Lynch called this feature the Insured Savings Account ("ISA") (collectively, "Original 1983 CMA/ISA Service"). Upon information and belief, details of the Original 1983 CMA/ISA Service are highly material to several, if not all, of the claim limitations in the '286, '551, and '350 Patents.

159. Upon information and belief, details of the Original 1983 CMA/ISA Service were well-known in the financial industry. Upon information and belief, Bruce Bent and Bruce Bent II, as financial industry insiders, knowingly and intentionally withheld details of the Original 1983 CMA/ISA Service, including, but not limited to, the fact that the Original 1983 CMA/ISA Service tied interest rates to a balance of funds. Upon information and belief, this omission is both material and non-cumulative to all of the claims, including at least the limitation of claim 1 of the '286 Patent that recites: "determining ... a respective interest rate ... based at least in part on the updated balance of funds associated with the client account in the subset." This is a limitation that Reserve used to distinguish claim 1 of the '286 Patent from the prior art during prosecution.

160. Upon information and belief, had the Examiner of the application that led to the issuance of the '286 Patent known that the Original 1983 CMA/ISA Service tied interest rates to a balance of funds, the Examiner could have rejected all of the claims under 35 U.S.C. § 103 using a combination of U.S. Patent No. 4,985,833 and the Original 1983 CMA/ISA Service. Thus, this failure to disclose material information constitutes inequitable conduct, which renders the '286 Patent unenforceable. Under the doctrine of infectious unenforceability, this inequitable conduct during the prosecution of the '286 Patent renders unenforceable the applications that led to the '551 and '350 Patents.

D. Failure to Disclose And Material Misrepresentations Regarding the Merrill Lynch Banking Advantage Program

161. Upon information and belief, the Island Plaintiffs, named inventors, or attorneys, agents, or representatives of the Island Plaintiffs who were associated with the prosecution of the applications that matured into the '286, '551 and '350 Patents and other related applications, and in particular Bruce Bent and Bruce Bent II, knowingly, and with the intent to deceive the USPTO, failed to disclose material information regarding the Merrill Lynch Banking Advantage Program.

162. Upon information and belief, at least as early as 1998, Merrill Lynch began developing a second deposit sweep service. Merrill Lynch offered this second service to its brokerage customers at least as early as 2000 under the name Cash Management Account 2.0 ("2000 CMA 2.0 Service").

163. Upon information and belief, at least as early as 2000, Merrill Lynch began offering another related program called the Merrill Lynch Banking Advantage Program ("MLBA Program") as part of the 2000 CMA 2.0 Service. Upon information and belief, details of the MLBA Program are highly material to several, if not all, of the claim limitations in the '286, '551, and '350 Patents.

164. Upon information and belief, the Island Plaintiffs, named inventors, or attorneys, agents, or representatives of the Island Plaintiffs who were associated with the filing and prosecution of the then-pending application that led to the issuance of the '551 Patent, disclosed two material references regarding the MLBA Program to the USPTO in an IDS on March 3, 2009. In disclosing the two material references, the Island Plaintiffs certified that "to the knowledge of the undersigned, after making reasonable inquiry, no item of information contained in the [IDS] was known to any individual designated in 37 C.F.R. § 1.56(c) more than three months prior to the filing of the [IDS]." Upon information and belief, Bruce Bent II, one of the named inventors of the '286, '551, and '350 Patents, was aware of the MLBA Program long before the filing of the IDS, as evidenced by his comments about the program in a November 2000 article, entitled "Merrill Moves CMA Cash to Bank," which can be found on page 26 of the periodical, "On Wall Street."

165. Upon information and belief, the Island Plaintiffs, named inventors, or attorneys, agents, or representatives of the Island Plaintiffs, and in particular Bruce Bent and Bruce Bent II as principals of Reserve, were also aware of the MLBA Program more than three months before the filing of the March 3, 2009 IDS, as evidenced by page 11 of the iMoneyNet Article.

166. Upon information and belief, Bruce Bent II knowingly and intentionally withheld details of the MLBA Program, including, but not limited to, the fact that the MLBA Program tied interest rates to a balance of funds as early as June 2001. Upon information and belief, this omission is both material and non-cumulative to all of the claims, including at least the limitation of claim 1 of the '286 Patent that recites: "determining ... a respective interest rate ... based at least in part on the updated balance of funds associated with the client account in the subset." This is a limitation that Reserve used to distinguish claim 1 of the '286 Patent from the prior art during prosecution.

167. Upon information and belief, had the Examiner of the application that led to the issuance of the '286 Patent known that the MLBA Program tied interest rates to a balance of funds, the Examiner could have rejected all of the claims under 35 U.S.C. § 103(b) using a combination of U.S. Patent No. 4,985,833 and the MLBA Program. Thus, this failure to disclose material information constitutes inequitable conduct, which renders the '286 Patent unenforceable. Under the doctrine of infectious unenforceability, this inequitable conduct during the prosecution of the '286 Patent renders unenforceable the applications that led to the '551 and '350 Patents.

E. Failure to Disclose Information Regarding Deposit Sweep Services

168. Upon information and belief, the Island Plaintiffs, named inventors, or attorneys, agents, or representatives of the Island Plaintiffs who were associated with the filing and prosecution of the applications that led to the issuance of the '231 Patent, and in particular Bruce Bent and Bruce Bent II, knowingly and intentionally withheld material information from the USPTO regarding deposit sweep services, including a letter from Michael Bradford (General Counsel for the Federal Reserve Board) dated November 16, 1984 ("the Bradford Letter"). This constitutes inequitable conduct that would render the '231 Patent unenforceable.

169. Upon information and belief, the Bradford Letter was widely disseminated in the financial industry, which leads to the reasonable inference that Bruce Bent and Bruce Bent II were aware of this letter when they designed their original Reserve Insured Deposits program and when the application that led to the issuance of the '231 Patent was filed. Upon information and belief, the Bradford Letter discusses a proposal about how a bank could link a money market deposit account ("MMDA") to a demand deposit account ("DDA") in such a way to avoid the six withdrawal limit of 12 C.F.R. 1204.122 and to provide interest on checking accounts.

170. Upon information and belief, the Bradford Letter is at least material to the limitation of claim 1 in the '231 Patent that recites "... to deposit funds to or withdraw funds from said single insured money market deposit account." This is because in an Office Action Response on September 22, 2000, the Island Plaintiffs argued that claim 1 was patentably distinct over the prior art because it solved the six withdrawal limitation problem that was identified by the prior art. Upon information and belief, the Island Plaintiffs' mechanism for avoiding the six withdrawal limitation is substantially similar to the proposal described in the Bradford Letter. This failure to disclose the material Bradford Letter constitutes inequitable conduct, which renders the '231 Patent unenforceable.

171. Under the doctrine of infectious unenforceability, this inequitable conduct during the prosecution of the '231 Patent renders unenforceable later-filed applications, including the applications that led to the '286, '551, and '350 Patents.

172. There exists an actual and justiciable controversy between TBS and the Island Plaintiffs as to whether the '286, '551 and '350 Patents are unenforceable. This controversy is of sufficient immediacy and reality to warrant the issuance of a declaratory judgment.

173. Pursuant to 28 U.S.C. §§ 2201 and 2202, TBS is entitled to a declaratory judgment that the '286, '551, and '350 Patents are unenforceable, and any other relief that the Court deems necessary or proper.

**PRAYER FOR RELIEF**

WHEREFORE, TBS prays for the following:

- a. A declaration that TBS does not infringe any valid claims of the '286, '551 and '350 Patents;
- b. A declaration that each and every claim of the '286, '551, and '350 Patents is invalid;
- c. A declaration that the '286, '551, and '350 Patents are each unenforceable;
- d. Dismissal of all of Island Plaintiffs' claims in their entirety with prejudice;
- e. A judgment that this is an "exceptional case" and an award of TBS's reasonable attorneys' fees, expenses, and costs in this action under 35 U.S.C. § 285; and
- f. An award of such other relief as the Court may deem appropriate and just under the circumstances.

**DEMAND FOR JURY TRIAL**

TBS demands a trial by jury of all issues set forth herein pursuant to Fed. R. Civ. P. 38.

Respectfully Submitted,

DATED: December 4, 2009

By: s/ Jeffrey A. Finn

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**UNITED STATES DISTRICT COURT FOR THE  
SOUTHERN DISTRICT OF NEW YORK**

**ISLAND INTELLECTUAL PROPERTY LLC,  
LIDS CAPITAL LLC, DOUBLE ROCK  
CORPORATION, and INTRASWEEP LLC,**

**Plaintiffs,**

**v.**

**PROMONTORY INTERFINANCIAL  
NETWORK, LLC, MBSC SECURITIES  
CORPORATION, DEUTSCHE BANK AG,  
DEUTSCHE BANK TRUST COMPANY  
AMERICAS, and TOTAL BANK SOLUTIONS,  
LLC,**

**Defendants.**

**09-CV-2675 (VM)**

**ANSWER AND  
COUNTERCLAIMS**

**ANSWER OF DEFENDANT MBSC SECURITIES CORPORATION**

Defendant MBSC Securities Corporation ("MBSC"), by its attorneys Mayer Brown LLP, for its Answer and Counterclaims in response to the Consolidated First Amended Complaint of Island Intellectual Property LLC ("Island IP"), LIDs Capital LLC ("LIDs Capital"), Double Rock Corporation ("Double Rock"), and Intrasweep LLC ("Intrasweep") (collectively, the "Reserve Parties"), dated June 11, 2009 ("Amended Complaint"), states as follows:

1. Paragraph 1 of the Amended Complaint purports to contain a description of the action, to which no response is required. To the extent that Paragraph 1 of the Amended Complaint requires an answer, MBSC denies the allegations contained therein.

2. Paragraph 2 of the Amended Complaint purports to contain a description of The Reserve Parties' claims, to which no answer is required. To the extent that Paragraph 2 of the Amended Complaint requires an answer, MBSC denies the allegations contained therein.

3. Paragraph 3 of the Amended Complaint purports that “true and correct” copies of certain patents are attached to the Amended Complaint, to which no response is required. To the extent that Paragraph 3 of the Amended Complaint requires an answer, MBSC denies the allegations contained therein.

THE PARTIES

4. States that it lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 4 of the Amended Complaint.

5. States that it lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 5 of the Amended Complaint.

6. States that it lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 6 of the Amended Complaint.

7. States that it lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 7 of the Amended Complaint.

8. States that it lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 8 of the Amended Complaint.

9. Admits the allegations contained in Paragraph 9 of the Amended Complaint.

10. States that it lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 10 of the Amended Complaint.

11. States that it lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 11 of the Amended Complaint.

12. States that it lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 12 of the Amended Complaint.

JURISDICTION AND VENUE

13. Paragraph 13 of the Amended Complaint is a statement of jurisdiction to which no answer is required. To the extent that Paragraph 13 of the Amended Complaint requires an answer, MBSC denies the allegations contained therein.

14. Paragraph 14 of the Amended Complaint is a statement of jurisdiction to which no answer is required. To the extent that Paragraph 14 of the Amended Complaint requires an answer, MBSC denies the allegations contained therein.

15. States that it lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 15 of the Amended Complaint.

16. Admits that this Court has personal jurisdiction over it for the purposes of this action and denies the remaining allegations contained in Paragraph 16 of the Amended Complaint.

17. States that it lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 17 of the Amended Complaint.

18. States that it lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 18 of the Amended Complaint.

19. States that it lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 19 of the Amended Complaint.

20. Paragraph 20 is a statement of venue to which no answer is required. To the extent that Paragraph 20 of the Amended Complaint requires an answer, MBSC denies the allegations contained therein.

FACTUAL BACKGROUND

21. Denies the allegations contained in Paragraph 21 of the Amended Complaint.

- 22. Denies the allegations contained in Paragraph 22 of the Amended Complaint.
- 23. Denies the allegations contained in Paragraph 23 of the Amended Complaint.
- 24. Denies the allegations contained in Paragraph 24 of the Amended Complaint.
- 25. Denies the allegations contained in Paragraph 25 of the Amended Complaint.
- 26. Denies the allegations contained in Paragraph 26 of the Amended Complaint.
- 27. Denies the allegations contained in Paragraph 27 of the Amended Complaint.
- 28. Denies the allegations contained in Paragraph 28 of the Amended Complaint.

THE PATENTS-IN-SUIT

29. Denies the allegations of Paragraph 29 of the Amended Complaint and refers to the published specifications and claims of the U.S. Patent No. 7,509,286 for its precise content.

30. Denies the allegations of Paragraph 30 of the Amended Complaint and refers to the published specifications and claims of the U.S. Patent No. 7,519,551 for its precise content.

31. Denies the allegations of Paragraph 31 of the Amended Complaint and refers to the published specifications and claims of the U.S. Patent No. 7,536,350 for its precise content.

32. States that it lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in Paragraph 32 of the Amended Complaint.

33. States that it lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in Paragraph 33 of the Amended Complaint.

34. States that it lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in Paragraph 34 of the Amended Complaint.

35. States that it lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in Paragraph 35 of the Amended Complaint.

**THE PROMONTORY AND DREYFUS INFRINGING PRODUCTS**

36. States that it lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in Paragraph 36 of the Amended Complaint.

37. Denies the allegations contained in Paragraph 37 of the Amended Complaint.

38. States that it lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in Paragraph 38 of the Amended Complaint.

39. Denies the allegations contained in Paragraph 39 of the Amended Complaint.

40. Denies the allegations contained in Paragraph 40 of the Amended Complaint.

41. States that it lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in Paragraph 41 of the Amended Complaint.

42. States that it lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in Paragraph 42 of the Amended Complaint.

43. States that it lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in Paragraph 43 of the Amended Complaint.

**THE DEUTSCHE DEFENDANTS' INFRINGING PRODUCTS**

44. States that it lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in Paragraph 44 of the Amended Complaint.

45. States that it lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in Paragraph 45 of the Amended Complaint.

46. States that it lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in Paragraph 46 of the Amended Complaint.

47. States that it lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in Paragraph 47 of the Amended Complaint.

48. States that it lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in Paragraph 48 of the Amended Complaint.

49. States that it lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in Paragraph 49 of the Amended Complaint.

50. States that it lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in Paragraph 50 of the Amended Complaint.

51. States that it lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in Paragraph 51 of the Amended Complaint.

52. States that it lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in Paragraph 52 of the Amended Complaint.

COUNT ONE

53. Incorporates the foregoing Paragraphs 1 through 52 by reference as if set forth fully herein.

54. Denies the allegations contained in Paragraph 54 of the Amended Complaint.

55. Denies the allegations contained in Paragraph 55 of the Amended Complaint.

56. Denies the allegations contained in Paragraph 56 of the Amended Complaint.

57. Denies the allegations contained in Paragraph 57 of the Amended Complaint.

COUNT TWO

58. Incorporates the foregoing Paragraphs 1 through 57 by reference as if set forth fully herein.

59. The allegations contained in Paragraph 59 of the Amended Complaint relate to Deutsche Bank AG, Deutsche Bank Trust Company, and Total Bank Solutions, LLC (together, "the Deutsche Defendants") and therefore do not require an answer. To the extent the allegations

contained in Paragraph 59 of the Amended Complaint purport to relate to MBSC, such allegations are denied.

60. The allegations contained in Paragraph 60 of the Amended Complaint relate to the Deutsche Defendants and therefore do not require an answer. To the extent the allegations contained Paragraph 60 of the Amended Complaint purport to relate to MBSC, such allegations are denied.

61. The allegations contained in Paragraph 61 of the Amended Complaint relate to the Deutsche Defendants and therefore do not require an answer. To the extent the allegations contained in Paragraph 61 of the Amended Complaint purport to relate to MBSC, such allegations are denied.

62. The allegations contained in Paragraph 62 of the Amended Complaint relate to the Deutsche Defendants and therefore do not require an answer. To the extent the allegations contained in Paragraph 62 of the Amended Complaint purport to relate to MBSC, such allegations are denied.

### COUNT THREE

63. Incorporates the foregoing Paragraphs 1 through 62 by reference as if set forth fully herein.

64. The allegations contained in Paragraph 64 of the Amended Complaint relate to Promontory and therefore do not require an answer. To the extent the allegations contained in Paragraph 64 of the Amended Complaint purport to relate to MBSC, such allegations are denied.

65. The allegations contained in Paragraph 65 of the Amended Complaint relate to Promontory and therefore do not require an answer. To the extent the allegations contained in Paragraph 65 of the Amended Complaint purport to relate to MBSC, such allegations are denied.



66. The allegations contained in Paragraph 66 of the Amended Complaint relate to Promontory and therefore do not require an answer. To the extent the allegations contained in Paragraph 66 of the Amended Complaint purport to relate to MBSC, such allegations are denied.

67. The allegations contained in Paragraph 67 of the Amended Complaint relate to Promontory and therefore do not require an answer. To the extent the allegations contained in Paragraph 67 of the Amended Complaint purport to relate to MBSC, such allegations are denied.

68. The allegations contained in Paragraph 68 of the Amended Complaint relate to Promontory and therefore do not require an answer. To the extent the allegations contained in Paragraph 68 of the Amended Complaint purport to relate to MBSC, such allegations are denied.

COUNT FOUR

69. Incorporates the foregoing Paragraphs 1 through 68 by reference as if set forth fully herein.

70. The allegations contained in Paragraph 70 of the Amended Complaint relate to the Deutsche Defendants and therefore do not require an answer. To the extent the allegations contained in Paragraph 70 of the Amended Complaint purport to relate to MBSC, such allegations are denied.

71. The allegations contained in Paragraph 71 of the Amended Complaint relate to the Deutsche Defendants and therefore do not require an answer. To the extent the allegations contained in Paragraph 71 of the Amended Complaint purport to relate to MBSC, such allegations are denied.

72. The allegations contained in Paragraph 72 of the Amended Complaint relate to the Deutsche Defendants and therefore do not require an answer. To the extent the allegations

contained in Paragraph 72 of the Amended Complaint purport to relate to MBSC, such allegations are denied.

73. The allegations contained in Paragraph 73 of the Amended Complaint relate to the Deutsche Defendants and therefore do not require an answer. To the extent the allegations contained in Paragraph 73 of the Amended Complaint purport to relate to MBSC, such allegations are denied.

74. The allegations contained in Paragraph 74 of the Amended Complaint relate to the Deutsche Defendants and therefore do not require an answer. To the extent the allegations contained in Paragraph 74 of the Amended Complaint purport to relate to MBSC, such allegations are denied.

#### COUNT FIVE

75. Incorporates the foregoing Paragraphs 1 through 74 by reference as if set forth fully herein.

76. The allegations contained in Paragraph 76 of the Amended Complaint relate to the Deutsche Defendants and therefore do not require an answer. To the extent the allegations contained in Paragraph 76 of the Amended Complaint purport to relate to MBSC, such allegations are denied.

77. The allegations contained in Paragraph 77 of the Amended Complaint relate to the Deutsche Defendants and therefore do not require an answer. To the extent the allegations contained in Paragraph 77 of the Amended Complaint purport to relate to MBSC, such allegations are denied.

78. The allegations contained in Paragraph 78 of the Amended Complaint relate to the Deutsche Defendants and therefore do not require an answer. To the extent the allegations

contained in Paragraph 78 of the Amended Complaint purport to relate to MBSC, such allegations are denied.

79. The allegations contained in Paragraph 79 of the Amended Complaint relate to the Deutsche Defendants and therefore do not require an answer. To the extent the allegations contained in Paragraph 79 of the Amended Complaint purport to relate to MBSC, such allegations are denied.

#### **PRAYER FOR RELIEF**

80. Denies that the Reserve Parties are entitled to any or all of the relief requested or to any other relief.

#### **AFFIRMATIVE DEFENSES**

##### **First Affirmative Defense**

81. The Amended Complaint, and each cause of action and claim for relief alleged therein, fails to state a claim upon which relief can be granted.

##### **Second Affirmative Defense**

82. Plaintiffs' claims are barred, in whole or in part, by the doctrine of unclean hands.

##### **Third Affirmative Defense**

83. Plaintiffs' claims are barred, in whole or in part, by Plaintiff's failure to mitigate its damages, if any.

##### **Fourth Affirmative Defense**

84. Plaintiffs' claims are barred, in whole or in part, by the doctrines of waiver, estoppel, and/or acquiescence.

##### **Fifth Affirmative Defense**

85. MBSC has not infringed, directly or indirectly, any valid claim of the '286 patent.

### **Sixth Affirmative Defense**

86. Each and every claim of the '286 patent is invalid under one or more of the provisions of Title 35 of the United States Code, including without limitation one or more of 35 U.S.C. §§ 101, 102, 103, 112, 116, and 135.

### **Seventh Affirmative Defense**

87. The '286 patent is unenforceable because one or more persons involved in the prosecution of the application that led to the '286 patent or applications related to the '286 patent committed inequitable conduct.

### **NATURE OF COUNTERCLAIMS**

Pursuant to 28 U.S.C. §§ 2201 and 2202, Fed. R. Civ. P. 57 and the Patent Act, 35 U.S.C. §§ 1 *et seq.*, MBSC brings this action against the Reserve Parties for a declaration that U.S. Patent No. 7,509,286 ("the '286 patent") is invalid, unenforceable, and not infringed by MBSC.

For its counterclaims, MBSC alleges as follows:

#### **THE PARTIES**

88. MBSC is a corporation organized and existing under the laws of the State of New York, with a place of business at 200 Park Avenue, New York, NY 10166, within this district. Dreyfus Investments, a division of MBSC, within the United States, refers clients to Defendant and Counterclaimant Promontory for use of Promontory's IND Service.

89. Upon information and belief, Plaintiff and counterclaim defendant Double Rock Corporation, which was previously known as Reserve Management Corporation ("the Reserve" or "Reserve Management"), is a New Jersey corporation with its principal place of business at 1250 Broadway, New York, New York 10001.

90. Upon information and belief, Plaintiff and counterclaim defendant Island Intellectual Property LLC, which is a wholly-owned, patent-holding subsidiary of Double Rock

Corporation, is a Delaware limited liability company with its principal place of business at 1250 Broadway, New York, New York 10001. The Reserve assigned all rights to the Reserve Patents and related patent applications to Island IP on December 4, 2008. Upon information and belief, throughout the existence of Island IP, Plaintiff Island IP has been controlled by the Reserve, and Plaintiffs Island IP and the Reserve have acted through the same agents and been represented by the same counsel.

91. Upon information and belief, Plaintiff and counterclaim defendant LIDs Capital, which is a wholly-owned subsidiary of Double Rock Corporation, is a limited liability corporation organized and existing under the laws of Delaware with its principal place of business at 1250 Broadway, New York, New York 10001. Upon information and belief, LIDs Capital is the exclusive licensee of the '286 patent and related patent applications. Upon information and belief, throughout the existence of LIDs Capital, Plaintiff LIDs Capital has been controlled by the Reserve, and Plaintiffs LIDs Capital and the Reserve have acted through the same agents and been represented by the same counsel.

92. Upon information and belief, Plaintiff and counterclaim defendant Intrasweep LLC, which is a wholly-owned subsidiary of Double Rock Corporation, is a limited liability company organized and existing under the laws of Delaware with its principal place of business at 1250 Broadway, New York, New York 10001.

#### JURISDICTION AND VENUE

93. This Court has subject matter jurisdiction over MBSC's declaratory judgment claims pursuant to 28 U.S.C. §§ 1331 and 1338(a), because they present a federal question arising under Title 35 of the United States Code, and pursuant to 28 U.S.C. §§ 2201 and 2202,

because an actual controversy exists as to the invalidity, enforceability, and infringement of the '286 patent.

94. Venue in this Court is proper pursuant to 28 U.S.C. § 1391(b), because the Reserve Parties reside in this judicial district and because the Reserve Parties sought transfer of this action to this judicial district.

95. This Court has personal jurisdiction over the Reserve Parties, because, upon information and belief: (i) the Reserve Parties have contracted to supply services or things in this State; (ii) the Reserve Parties have caused tortious injury in this State by an act or omission outside this State; and (iii) the Reserve Parties regularly do or solicit business, and engage in other persistent courses of conduct, and derive substantial revenue from goods used or consumed or services rendered, in this State.

## **COUNT I**

### **Declaratory Judgment of Non-Infringement of the '286 Patent**

96. The allegations contained in paragraphs numbered 1 through 95 are incorporated by reference herein with the same force and effect as if set forth in full below.

97. MBSC does not infringe, directly or indirectly, any claim of the '286 patent.

98. An actual and justiciable controversy exists between MBSC and the Reserve Parties as to whether MBSC infringes any claim of the '286 patent. This controversy is of sufficient immediacy and reality to warrant the issuance of a declaratory judgment.

99. Pursuant to 28 U.S.C. §§ 2201 and 2202, MBSC is entitled to a declaratory judgment that it does not infringe any claim of the '286 patent, and any other relief that the Court deems necessary or proper.

100. This is an exceptional case under 35 U.S.C. § 285, entitling MBSC to an award of its attorneys' fees incurred in connection with this action.

## **COUNT II**

### **Declaratory Judgment of Invalidity of the '286 Patent**

101. The allegations contained in paragraphs numbered 1 through 100 are incorporated by reference herein with the same force and effect as if set forth in full below.

102. Each and every claim of the '286 patent is invalid under one or more of the provisions of Title 35 of the United States Code, including without limitation one or more of 35 U.S.C. §§ 101, 102, 103, 112, 116, and 135.

103. An actual and justiciable controversy exists between MBSC and the Reserve Parties as to whether each claim of the '286 patent is invalid. This controversy is of sufficient immediacy and reality to warrant the issuance of a declaratory judgment.

104. Pursuant to 28 U.S.C. §§ 2201 and 2202, MBSC is entitled to a declaratory judgment that each claim of the '286 patent is invalid, and any other relief that the Court deems necessary or proper.

105. This is an exceptional case under 35 U.S.C. § 285, entitling MBSC to an award of its attorneys' fees incurred in connection with this action.

## **COUNT III**

### **Declaratory Judgment of Unenforceability of the '286 Patent**

106. The allegations contained in paragraphs numbered 1 through 105 are incorporated by reference herein with the same force and effect as if set forth in full below.

107. Upon information and belief, the '286 patent is unenforceable because one or more persons involved in the prosecution of the application that led to the '286 patent or applications related to the '286 patent committed inequitable conduct. Upon information and

belief, with the intent to deceive the PTO, the Reserve Parties, the named inventors, or attorneys, agents or representatives of the Reserve Parties breached the duty of candor, good faith, and honesty in prosecuting these applications by submitting false or misleading information, misrepresenting information, or failing to disclose information material to the patentability of the claimed inventions.

108. Upon information and belief, but for the Reserve's intentional deception, the PTO would not have issued the '286 patent.

109. An actual and justiciable controversy exists between MBSC and the Reserve Parties as to whether each claim of the '286 patent is unenforceable. This controversy is of sufficient immediacy and reality to warrant the issuance of a declaratory judgment.

110. Pursuant to 28 U.S.C. §§ 2201 and 2202, MBSC is entitled to a declaratory judgment that each claim of the '286 patent is unenforceable, and any other relief that the Court deems necessary or proper.

111. This is an exceptional case under 35 U.S.C. § 285, entitling MBSC to an award of its attorneys' fees incurred in connection with this action.

#### **DEMAND FOR JUDGMENT**

WHEREFORE, Defendant and counterclaim plaintiff MBSC Securities Corporation respectfully requests that this Court grant the following relief:

- a. Declare that MBSC does not infringe any valid and enforceable claim of the '286 patent;
- b. Declare that each and every claim of the '286 patent is invalid;
- c. Declare that each and every claim of the '286 patent is unenforceable.



- d. Find this case "exceptional" within the meaning of 35 U.S.C. § 285 and award MBSC all reasonable attorney's fees, expenses, and costs;
- e. Award such other relief as this Court deems just and proper.

Dated: June 25, 2009

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Robert D. Gilbert", is written over a horizontal line.

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Counsel for Defendant  
MBSC SECURITIES CORPORATION

**CERTIFICATE OF SERVICE**

I hereby certify that on this 25th day of June 2009, I will electronically file the foregoing with the Clerk of Court using the CM/ECF system. In addition, I hereby certify that copies of the foregoing have been served, by first-class mail, postage prepaid, and by email, to the following:

Charles R. Macedo, Esq.  
Amster, Rothstein & Ebenstein LLP  
90 Park Avenue  
New York, NY 10016  
cmacedo@ARELAW.com

*Counsel For plaintiff and counterclaim defendants Double Rock Corporation, P/K/A Reserve Management Corporation, Island Intellectual Property LLC, LIDs Capital LLC, and Intrasweep LLC*

/s/ Anthony J. Diana, Esq.  
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UNITED STATES DISTRICT COURT FOR THE  
SOUTHERN DISTRICT OF NEW YORK

ISLAND INTELLECTUAL PROPERTY LLC,  
LIDS CAPITAL LLC, DOUBLE ROCK  
CORPORATION, and INTRASWEEP LLC,

Plaintiffs,

v.

PROMONTORY INTERFINANCIAL  
NETWORK, LLC, MBSC SECURITIES  
CORPORATION, DEUTSCHE BANK AG,  
DEUTSCHE BANK TRUST COMPANY  
AMERICAS, and TOTAL BANK SOLUTIONS,  
LLC,

Defendants.

09-CV-2675 (VM)

ANSWER AND  
COUNTERCLAIMS

**ANSWER OF DEFENDANT PROMONTORY INTERFINANCIAL NETWORK, LLC**

Defendant Promontory Interfinancial Network, LLC ("Promontory"), by its attorneys Mayer Brown LLP, for its Answer and Counterclaims in response to the Consolidated First Amended Complaint of Island Intellectual Property LLC ("Island IP"), LIDs Capital LLC ("LIDs Capital"), Double Rock Corporation, which was previously known as Reserve Management Corporation ("the Reserve" or "Reserve Management"), and Intrasweep LLC ("Intrasweep") (collectively, the "Reserve Parties"), dated June 11, 2009 ("Amended Complaint"), alleges as follows:

1. Paragraph 1 of the Amended Complaint purports to contain a description of the action, to which no response is required. To the extent that Paragraph 1 of the Amended Complaint requires an answer, Promontory denies the allegations contained therein.

2. Paragraph 2 of the Amended Complaint purports to contain a description of The Reserve Parties' claims, to which no answer is required. To the extent that Paragraph 2 of the Amended Complaint requires an answer, Promontory denies the allegations contained therein.

3. Paragraph 3 of the Amended Complaint alleges that "true and correct" copies of certain patents are attached to the Amended Complaint, to which no response is required. To the extent that Paragraph 3 of the Amended Complaint requires an answer, Promontory denies the allegations contained therein.

#### THE PARTIES

4. States that it lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 4 of the Amended Complaint.

5. States that it lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 5 of the Amended Complaint.

6. States that it lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 6 of the Amended Complaint.

7. States that it lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 7 of the Amended Complaint.

8. Admits the allegations contained in Paragraph 8 of the Amended Complaint.

9. States that it lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 9 of the Amended Complaint.

10. States that it lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 10 of the Amended Complaint.

11. States that it lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 11 of the Amended Complaint.

12. States that it lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 12 of the Amended Complaint.

JURISDICTION AND VENUE

13. Paragraph 13 of the Amended Complaint is a statement of jurisdiction to which no answer is required. To the extent that Paragraph 13 of the Amended Complaint requires an answer, Promontory denies the allegations contained therein.

14. Paragraph 14 of the Amended Complaint is a statement of jurisdiction to which no answer is required. To the extent that Paragraph 14 of the Amended Complaint requires an answer, Promontory denies the allegations contained therein.

15. Admits that this Court has personal jurisdiction over it for the purposes of this action and denies the remaining allegations contained in Paragraph 15 of the Amended Complaint.

16. States that it lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 16 of the Amended Complaint.

17. States that it lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 17 of the Amended Complaint.

18. States that it lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 18 of the Amended Complaint.

19. States that it lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 19 of the Amended Complaint.

20. Paragraph 20 is a statement of venue to which no answer is required. To the extent that Paragraph 20 of the Amended Complaint requires an answer, Promontory denies the allegations contained therein.

FACTUAL BACKGROUND

21. Denies the allegations contained in Paragraph 21 of the Amended Complaint.
22. Denies the allegations contained in Paragraph 22 of the Amended Complaint.
23. Denies the allegations contained in Paragraph 23 of the Amended Complaint.
24. Denies the allegations contained in Paragraph 24 of the Amended Complaint.
25. Denies the allegations contained in Paragraph 25 of the Amended Complaint.
26. Denies the allegations contained in Paragraph 26 of the Amended Complaint.
27. Denies the allegations contained in Paragraph 27 of the Amended Complaint.
28. Denies the allegations contained in Paragraph 28 of the Amended Complaint.

THE PATENTS-IN-SUIT

29. Denies the allegations of Paragraph 29 of the Amended Complaint and refers to the published specifications and claims of the U.S. Patent No. 7,509,286 for its precise content.
30. Denies the allegations of Paragraph 30 of the Amended Complaint and refers to the published specifications and claims of the U.S. Patent No. 7,519,551 for its precise content.
31. Denies the allegations of Paragraph 31 of the Amended Complaint and refers to the published specifications and claims of the U.S. Patent No. 7,536,350 for its precise content.
32. States that it lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in Paragraph 32 of the Amended Complaint.
33. States that it lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in Paragraph 33 of the Amended Complaint.
34. States that it lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in Paragraph 34 of the Amended Complaint.

35. States that it lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in Paragraph 35 of the Amended Complaint.

**THE PROMONTORY AND DREYFUS INFRINGING PRODUCTS**

36. Denies the allegations contained in Paragraph 36 of the Amended Complaint.

37. States that it lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in Paragraph 37 of the Amended Complaint.

38. Denies the allegations contained in Paragraph 38 of the Amended Complaint.

39. Denies the allegations contained in Paragraph 39 of the Amended Complaint.

40. Denies the allegations contained in Paragraph 40 of the Amended Complaint.

41. Denies the allegations contained in Paragraph 41 of the Amended Complaint.

42. Denies the allegations contained in Paragraph 42 of the Amended Complaint.

43. Denies the allegations contained in Paragraph 43 of the Amended Complaint.

**THE DEUTSCHE DEFENDANTS' INFRINGING PRODUCTS**

44. States that it lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in Paragraph 44 of the Amended Complaint.

45. States that it lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in Paragraph 45 of the Amended Complaint.

46. States that it lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in Paragraph 46 of the Amended Complaint.

47. States that it lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in Paragraph 47 of the Amended Complaint.

48. States that it lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in Paragraph 48 of the Amended Complaint.

49. States that it lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in Paragraph 49 of the Amended Complaint.

50. States that it lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in Paragraph 50 of the Amended Complaint.

51. States that it lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in Paragraph 51 of the Amended Complaint.

52. States that it lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in Paragraph 52 of the Amended Complaint.

COUNT ONE

53. Incorporates the foregoing Paragraphs 1 through 52 by reference as if set forth fully herein.

54. Denies the allegations contained in Paragraph 54 of the Amended Complaint.

55. Denies the allegations contained in Paragraph 55 of the Amended Complaint.

56. Denies the allegations contained in Paragraph 56 of the Amended Complaint.

57. Denies the allegations contained in Paragraph 57 of the Amended Complaint.

COUNT TWO

58. Incorporates the foregoing Paragraphs 1 through 57 by reference as if set forth fully herein.

59. The allegations contained in Paragraph 59 of the Amended Complaint relate to Deutsche Bank AG, Deutsche Bank Trust Company, and Total Bank Solutions, LLC (together, “the Deutsche Defendants”) and therefore do not require an answer. To the extent the allegations contained in Paragraph 59 of the Amended Complaint purport to relate to Promontory, such allegations are denied.



60. The allegations contained in Paragraph 60 of the Amended Complaint relate to the Deutsche Defendants and therefore do not require an answer. To the extent the allegations contained Paragraph 60 of the Amended Complaint purport to relate to Promontory, such allegations are denied.

61. The allegations contained in Paragraph 61 of the Amended Complaint relate to the Deutsche Defendants and therefore do not require an answer. To the extent the allegations contained in Paragraph 61 of the Amended Complaint purport to relate to Promontory, such allegations are denied.

62. The allegations contained in Paragraph 62 of the Amended Complaint relate to the Deutsche Defendants and therefore do not require an answer. To the extent the allegations contained in Paragraph 62 of the Amended Complaint purport to relate to Promontory, such allegations are denied.

### COUNT THREE

63. Incorporates the foregoing Paragraphs 1 through 62 by reference as if set forth fully herein.

64. Denies the allegations contained in Paragraph 64 of the Amended Complaint.

65. Denies the allegations contained in Paragraph 65 of the Amended Complaint.

66. Denies the allegations contained in Paragraph 66 of the Amended Complaint.

67. Denies the allegations contained in Paragraph 67 of the Amended Complaint.

68. Denies the allegations contained in Paragraph 68 of the Amended Complaint.

### COUNT FOUR

69. Incorporates the foregoing Paragraphs 1 through 68 by reference as if set forth fully herein.

70. The allegations contained in Paragraph 70 of the Amended Complaint relate to the Deutsche Defendants and therefore do not require an answer. To the extent the allegations contained in Paragraph 70 of the Amended Complaint purport to relate to Promontory, such allegations are denied.

71. The allegations contained in Paragraph 71 of the Amended Complaint relate to the Deutsche Defendants and therefore do not require an answer. To the extent the allegations contained in Paragraph 71 of the Amended Complaint purport to relate to Promontory, such allegations are denied.

72. The allegations contained in Paragraph 72 of the Amended Complaint relate to the Deutsche Defendants and therefore do not require an answer. To the extent the allegations contained in Paragraph 72 of the Amended Complaint purport to relate to Promontory, such allegations are denied.

73. The allegations contained in Paragraph 73 of the Amended Complaint relate to the Deutsche Defendants and therefore do not require an answer. To the extent the allegations contained in Paragraph 73 of the Amended Complaint purport to relate to Promontory, such allegations are denied.

74. The allegations contained in Paragraph 74 of the Amended Complaint relate to the Deutsche Defendants and therefore do not require an answer. To the extent the allegations contained in Paragraph 74 of the Amended Complaint purport to relate to Promontory, such allegations are denied.

#### COUNT FIVE

75. Incorporates the foregoing Paragraphs 1 through 74 by reference as if set forth fully herein.

76. The allegations contained in Paragraph 76 of the Amended Complaint relate to the Deutsche Defendants and therefore do not require an answer. To the extent the allegations contained in Paragraph 76 of the Amended Complaint purport to relate to Promontory, such allegations are denied.

77. The allegations contained in Paragraph 77 of the Amended Complaint relate to the Deutsche Defendants and therefore do not require an answer. To the extent the allegations contained in Paragraph 77 of the Amended Complaint purport to relate to Promontory, such allegations are denied.

78. The allegations contained in Paragraph 78 of the Amended Complaint relate to the Deutsche Defendants and therefore do not require an answer. To the extent the allegations contained in Paragraph 78 of the Amended Complaint purport to relate to Promontory, such allegations are denied.

79. The allegations contained in Paragraph 79 of the Amended Complaint relate to the Deutsche Defendants and therefore do not require an answer. To the extent the allegations contained in Paragraph 79 of the Amended Complaint purport to relate to Promontory, such allegations are denied.

#### **PRAYER FOR RELIEF**

80. Denies that the Reserve Parties are entitled to any or all of the relief requested or to any other relief.

#### **AFFIRMATIVE DEFENSES**

##### **First Affirmative Defense**

81. The Amended Complaint, and each cause of action and claim for relief alleged therein, fails to state a claim upon which relief can be granted.

**Second Affirmative Defense**

82. Plaintiffs' claims are barred, in whole or in part, by the doctrine of unclean hands.

**Third Affirmative Defense**

83. Plaintiffs' claims are barred, in whole or in part, by Plaintiffs' failure to mitigate its damages, if any.

**Fourth Affirmative Defense**

84. Plaintiffs' claims are barred, in whole or in part, by the doctrines of waiver, estoppel, and/or acquiescence.

**Fifth Affirmative Defense**

85. Promontory has not infringed, directly or indirectly, any valid claim of the '231 patent, the '286 patent, or the '551 patent.

**Sixth Affirmative Defense**

86. Each and every claim of the '286 patent is invalid under one or more of the provisions of Title 35 of the United States Code, including without limitation one or more of 35 U.S.C. §§ 101, 102, 103, 112, 116, and 135.

**Seventh Affirmative Defense**

87. Each and every claim of the '551 patent is invalid under one or more of the provisions of Title 35 of the United States Code, including without limitation one or more of 35 U.S.C. §§ 101, 102, 103, 112, 116, and 135.

**Eighth Affirmative Defense**

88. The '286 patent is unenforceable because one or more persons involved in the prosecution of the application that led to the '286 patent or applications related to the '286 patent committed inequitable conduct.

### **Ninth Affirmative Defense**

89. The '551 patent is unenforceable because one or more persons involved in the prosecution of the application that led to the '551 patent or applications related to the '551 patent committed inequitable conduct.

### **NATURE OF THE COUNTERCLAIMS**

Promontory, for its counterclaims, alleges as follows:

90. Promontory and the Reserve compete in the market for providing "deposit sweep services" to broker-dealers. In a deposit sweep service, cash held in customer accounts at broker-dealers is transferred electronically ("swept") into federally-insured and interest-bearing deposit accounts until the cash is needed by the customer. Financial institutions have offered such services to their customers since at least the early 1980s. Nonetheless, more than ten years later in the late 1990s, the Reserve began filing United States patent applications purporting to claim methods and systems for providing deposit sweep services that are indistinguishable from these earlier services. The methods and systems claimed by the Reserve were well-known when it filed its applications: the "invention" the Reserve sought to patent involves nothing more than the application of longstanding legal principles found in banking statutes, regulations, and court decisions.

91. Knowing that deposit sweep services offered years before would likely prevent it from obtaining any issued patents, the Reserve, and more recently, Island IP, intentionally concealed from and misrepresented to the United States Patent and Trademark Office ("PTO") material information about these earlier services during the prosecution of its patent applications. The Reserve also intentionally concealed from and misrepresented to the PTO material information about the Reserve's own deposit sweep service -- including that it was offered for sale more than one year prior to the first Reserve patent application. As a result of these

concealments and misrepresentations, three of the applications filed by the Reserve have now issued as United States Patents Nos. 6,374,231 (“the ’231 patent”), 7,509,286 (“the ’286 patent”), and 7,519,551 (“the ’551 patent”) (collectively, “the Reserve Patents”). Upon information and belief, the Reserve assigned its rights to the Reserve Patents and related patent applications to Island IP, a wholly owned subsidiary of the Reserve, in December 2008.

92. Promontory offers its customers a deposit sweep service that works in a fundamentally different way than the Reserve’s deposit sweep service and the methods and systems that are the subject of the Reserve Patents and related patent applications. The Reserve Parties know or should know that Promontory’s service is not covered by these patents and applications and that the Reserve Patents and related patent applications are invalid and unenforceable. Yet the Reserve has falsely stated to Promontory’s customers and service providers that Promontory’s deposit sweep service practices the Reserve Patents and related applications and that Promontory’s customers and service providers may incur liability for patent infringement. This improper and malicious conduct by the Reserve has harmed Promontory’s business and reputation and has caused Promontory to lose substantial potential revenue.

93. Since as early as 2006, the Reserve Parties have been asserting that Promontory was infringing the Reserve Patents and related patent applications. Most recently, in a letter to Promontory’s counsel dated March 10, 2009, the Reserve Parties reiterated their allegation that Promontory was wrongly using the purported inventions claimed in the ’231 patent, the applications for the ’286 patent, and the ’551 patent, as well as pending related patent applications, reciting

[Y]our June 30, 2006 letter which categorically denied Promontory’s use of the claimed invention and incorrectly asserted that the ’231 Patent and the pending patent applications “circumvent, if not violate, federal regulatory requirements.” Your client, or at least its banking counsel, should have realized that both of these assertions were untrue. [...]

Since that time, your client's willful misappropriation of Double Rock's inventions to compete with Double Rock has resulted in substantial harm to Double Rock, including the loss of several clients, and has eroded Double Rock's profits on the products it has been able to sell.

94. Accordingly, a substantial, immediate, and real controversy exists between Promontory and the Reserve Parties that can be fully resolved in this action, and therefore, Promontory brings claims under federal law to declare the Reserve Patents invalid, unenforceable, and not infringed, and under federal and state law to address the Reserve's unfair competition and its false statements to Promontory's customers and service providers. Promontory seeks declaratory and injunctive relief, compensatory damages, attorney's fees, and costs.

#### **JURISDICTION AND VENUE**

95. This Court has subject matter jurisdiction over Promontory's declaratory judgment claims (Counterclaims I - IX) pursuant to 28 U.S.C. §§ 1331 and 1338(a), because they present a federal question arising under Title 35 of the United States Code, and pursuant to 28 U.S.C. §§ 2201 and 2202, because an actual controversy exists as to the invalidity, enforceability, and infringement of the Reserve Patents. This Court has supplemental subject matter jurisdiction over Promontory's state law claims (Counterclaims X - XI) pursuant to 28 U.S.C. § 1367(a). This Court has subject matter jurisdiction over Promontory's unfair competition claim arising under the Lanham Act, 15 U.S.C. § 1125(a) (Counterclaim XII) pursuant to 28 U.S.C. § 1331. This Court also has subject matter jurisdiction over Promontory's state and federal law unfair competition claims (Counterclaims X - XII) pursuant to 28 U.S.C. § 1338(b), because they are joined with substantial and related claims under the patent laws.

96. Venue in this Court is proper pursuant to 28 U.S.C. § 1391(b), because the Reserve Parties reside in this judicial district and because the Reserve Parties sought transfer of this action to this judicial district.

97. This Court has personal jurisdiction over the Reserve Parties, because, upon information and belief: (i) the Reserve Parties have contracted to supply services or things in this State; (ii) the Reserve Parties have caused tortious injury in this State by an act or omission outside this State; and (iii) the Reserve Parties regularly do or solicit business, and engage in other persistent courses of conduct, and derive substantial revenue from goods used or consumed or services rendered, in this State. The Reserve Parties have also consented to personal jurisdiction in this Court by filing the underlying action and by moving to transfer actions filed by Promontory in the Eastern District of Virginia to this Court.

#### **PARTIES**

98. Defendant and counterclaim plaintiff Promontory is a Delaware limited liability company with its principal place of business at 1515 N. Courthouse Road, Arlington, Virginia 22201. Promontory was founded in 2002 by banking-industry leaders, including a former Comptroller of the Currency, Vice Chairman of the Federal Reserve Board, and Chief of Staff of the Federal Deposit Insurance Corporation ("FDIC"). Promontory provides services to the financial services industry, including, among other things, deposit sweep services for broker-dealers.

99. Upon information and belief, Plaintiff and counterclaim defendant the Reserve, is a New Jersey corporation with its principal place of business at 1250 Broadway, New York, New York 10001. The Reserve is a direct competitor of Promontory in the market for deposit sweep services. Upon information and belief, the Reserve is the sublicensee of LIDs Capital for the



'551 patent with respect to providing cash management services for broker dealers and asset managers.

100. Upon information and belief, Plaintiff and counterclaim defendant Island IP, which is a wholly-owned, patent-holding subsidiary of the Reserve, is a Delaware limited liability company with its principal place of business at 1250 Broadway, New York, New York 10001. Upon information and belief, the Reserve assigned all rights to the Reserve Patents and related patent applications to Island IP in December 2008. Upon information and belief, throughout the existence of Island IP, Plaintiff Island IP has been controlled by the Reserve, and Plaintiffs Island IP and the Reserve have acted through the same agents and been represented by the same counsel.

101. Upon information and belief, Plaintiff and counterclaim defendant LIDs Capital, which is a wholly-owned subsidiary of the Reserve, is a limited liability corporation organized and existing under the laws of Delaware with its principal place of business at 1250 Broadway, New York, New York 10001. Upon information and belief, LIDs Capital is the exclusive licensee of the '231 and '286 patents and related patent applications, and the '551 patent with respect to providing cash management services for broker dealers and asset managers. Upon information and belief, throughout the existence of LIDs Capital, Plaintiff LIDs Capital has been controlled by the Reserve, and Plaintiffs LIDs Capital and the Reserve have acted through the same agents and been represented by the same counsel.

102. Upon information and belief, Plaintiff and counterclaim defendant Intrasweep, which is a wholly-owned subsidiary of the Reserve, is a limited liability company organized and existing under the laws of Delaware with its principal place of business at 1250 Broadway, New York, New York 10001. Upon information and belief, Intrasweep is the exclusive licensee of

Island IP for the '551 patent with respect to providing cash management services for banks in connection with money market deposit accounts and demand deposit accounts that facilitate the transfer of funds between money market deposit accounts and demand deposit accounts. Upon information and belief, throughout the existence of Intrasweep, Plaintiff Intrasweep has been controlled by the Reserve, and Plaintiffs Intrasweep and the Reserve have acted through the same agents and been represented by the same counsel.

## **FACTUAL BACKGROUND**

### **Deposit Sweep Services**

103. Broker-dealer customers commonly hold uninvested or “excess” cash in their brokerage accounts. The excess cash held in a brokerage account may result from interest or dividend payments on securities, the sale of securities, or a deposit of cash by the customer. Under SEC regulations, a broker-dealer is not required to pay interest on such excess cash.

104. As a service to their customers, many broker-dealers will automatically invest, or “sweep,” the excess cash in a customer’s brokerage account into a liquid investment, such as a money market mutual fund or a bank deposit account. Broker-dealers may also offer cash management features on the brokerage account, allowing the customer to write checks, make debit card transactions, and make ATM withdrawals against the cash in the brokerage account. When a customer uses the cash management feature to make such a transaction, the broker-dealer withdraws funds from the money market fund or deposit account to satisfy the debits incurred by the customer.

105. Many broker-dealers that provide sweeps of excess cash offer their customers the option to sweep cash into a deposit account at a bank whose accounts are insured by the FDIC (hereinafter, “a deposit sweep arrangement”). In a typical deposit sweep arrangement, such as those supported by Promontory, on each business day the broker-dealer sweeps excess cash from

the brokerage accounts into the deposit accounts and transfers funds back into the brokerage accounts that are necessary to satisfy any withdrawals or transactions by the broker-dealer's customers (e.g., check or debit card transactions).

106. In many deposit sweep arrangements, including those supported by Promontory, the cash is swept from the brokerage accounts to deposit accounts at one or more banks. Federal banking laws and regulations do not require banks to hold cash reserves against certain deposit accounts, such as Money Market Deposit Accounts ("MMDAs"), so long as depositors are prohibited from making more than six transfers or withdrawals in a month, no more than three of which may be withdrawals by check or debit card, subject to certain exceptions.

107. A deposit sweep arrangement allows a broker-dealer customer to earn interest and obtain FDIC insurance on cash that is not immediately needed and that, if kept in the brokerage account, may not generate interest or obtain FDIC insurance. By using properly designed deposit sweep arrangements, customers can make unlimited transactions, including check and debit card transactions, from their brokerage accounts, while earning interest and/or obtaining FDIC insurance.

108. Some broker-dealers sweep customer funds into MMDAs at multiple banks. This permits the broker-dealer to offer customers FDIC insurance on their deposits in excess of the limit imposed upon a single depositor at a single bank, which is presently \$250,000.

109. Broker-dealers benefit from deposit sweep arrangements because the broker-dealers are typically paid a fee based on a percentage of the deposits placed with the bank.

110. A deposit sweep arrangement also benefits banks that hold swept funds because the arrangement provides such banks with a relatively large, long-term, and stable source of deposits. Further, by complying with the limits on the number of withdrawals or transfers that

can be made in a month from an MMDA, such banks generally are not required to hold cash reserves on the swept funds while they are held in an MMDA.

111. Service providers in the deposit sweep services market, such as Promontory, enter into agreements with broker-dealers to provide processing services in connection with a deposit sweep arrangement, and with banks to accept swept funds into deposit accounts. These service providers, including Promontory, typically receive a fee from the banks for their services.

112. Upon information and belief, the first deposit sweep service was developed and offered by Merrill Lynch, Pierce, Fenner & Smith ("Merrill Lynch"). As a broker-dealer, Merrill Lynch offered this service to its brokerage customers at least as early as 1983 as a feature of Merrill Lynch's Cash Management Account ("CMA"), a brokerage account with cash management features. Merrill Lynch called this feature the Insured Savings Account ("ISA") (collectively, "Original 1983 CMA/ISA Service").

113. Since Merrill Lynch introduced the Original 1983 CMA/ISA Service, many broker-dealers and banks have offered similar deposit sweep services to their customers. Such services were offered well before the Reserve Parties made any applications with the PTO for the Reserve Patents.

114. Upon information and belief, at least as early 1998, Merrill Lynch began developing a second deposit sweep service. Merrill Lynch offered this second service, known internally at Merrill Lynch as the Cash Management Account 2.0 ("2000 CMA 2.0 Service"), to its brokerage customers at least as early as 2000.

#### **Regulatory Background**

115. The structure and operation of a deposit sweep service must comply with various banking statutes and regulations, as well as guidance from relevant federal agencies.

116. Under a regulation promulgated by the Federal Reserve Board in 1980, an MMDA depositor “is permitted or authorized to make no more than six transfers and withdrawals, or a combination of such transfers and withdrawals, per calendar month or statement cycle (or similar period) of at least four weeks, to another account (including a transaction account) of the depositor at the same institution or to a third party by means of a preauthorized or automatic transfer, or telephonic (including data transmission) agreement, order or instruction, and no more than three of the six such transfers may be made by check, draft, debit card, or similar order made by the depositor and payable to third parties.” 12 C.F.R. § 204.2(d)(2) (hereinafter, “Regulation D”).

117. Regulation D contains an exception to this general monthly limit for any “transfers or withdrawals [that] are made by mail, messenger, automated teller machine, or in person or when such withdrawals are made by telephone (via check mailed to the depositor) regardless of the number of such transfers or withdrawals.”

118. The Federal Reserve Board has provided guidance on whether certain deposit sweep services comply with Regulation D. In an interpretive letter dated June 22, 1983, the Federal Reserve Board concluded that, under Regulation D, a broker-dealer cannot establish MMDAs, in its own name, and utilize a messenger to make withdrawals from the MMDAs on behalf of the broker-dealer’s customers, in order to offer those customers unlimited checking or debit card transactions. In a letter dated June 22, 1988, the Federal Reserve Board reaffirmed that these types of deposit sweep services violate Regulation D (“Federal Reserve Board Letter”).

### **The Parties' Competing Deposit Sweep Services**

119. Promontory began providing processing services to broker-dealers to support deposit sweep arrangements in 2006. Promontory offers such services under the service marks Insured Network Deposits and IND® (hereinafter, all versions collectively referred to as "IND").

120. Promontory has carefully designed IND to comply with applicable laws, regulations and regulatory guidance, and Promontory promotes and markets the service by reference to such compliance. IND does not make withdrawals or transfers from MMDAs established through IND using any of the five methods that allow for unlimited monthly withdrawals or transfers from an MMDA under Regulation D.

121. At present, IND supports numerous broker-dealers in sweeping cash from brokerage accounts into deposit accounts. By sweeping funds into multiple banks, the IND service permits broker-dealers to offer each of their eligible customers access to additional FDIC insurance.

122. The Reserve has offered a service to broker-dealers under the service mark Reserve Insured Deposits®. Upon information and belief, the Reserve began offering this service to the public as early as 1997. The Reserve Insured Deposits service directly has competed with Promontory's IND service.

123. Upon information and belief, the Reserve has assisted broker-dealers in establishing MMDAs at banking institutions to hold funds swept from brokerage accounts through the Reserve Insured Deposits service. Upon information and belief, at all relevant times, and in violation of Regulation D, the Reserve has employed messengers to withdraw or transfer funds from the MMDAs and to provide broker-dealer customers with unlimited withdrawals from their brokerage account, including withdrawals by check or debit card.

### **The Reserve Patents and Related Applications**

124. In late 1998, the Reserve began to file United States patent applications relating to certain aspects of deposit sweep services.

125. On or about October 21, 1998, the Reserve filed U.S. Patent Application No. 09/176,340. This application issued as the '231 patent on or about April 16, 2002. The Reserve had alleged that it owned the '231 patent until the transfer of all its rights to the '231 patent to its wholly-owned subsidiary, Island IP, in December 2008. Island IP has alleged that it owns the '231 patent.

126. Upon information and belief, on or about April 11, 2003, the Reserve filed U.S. Patent Application No. 10/411,650 ("the '650 application") as a continuation-in-part of the '231 patent. The '650 application was unpublished by the PTO. The Reserve had alleged that it owned the '650 application until the transfer of all its rights to the '650 patent application to its wholly-owned subsidiary, Island IP, in December 2008.

127. The '650 application issued as the '286 patent on or about March 24, 2009. Upon information and belief, Island IP alleges that it owns the '286 patent.

128. Upon information and belief, on or about February 8, 2002, the Reserve filed U.S. Patent Application No. 10/071,053 ("the '053 application") as a continuation-in-part of the '231 patent. The Reserve had alleged that it owned the '053 application until the transfer of all its rights to the '053 patent application to its wholly-owned subsidiary, Island IP, in December 2008.

129. The '053 application issued as the '551 patent on or about April 14, 2009. Upon information and belief, Island IP alleges that it owns the '551 patent.

130. Upon information and belief, on or about March 6, 2003, the Reserve filed U.S. Patent Application No. 10/382,946 ("the '946 application") as a continuation-in-part of the '053

application. The Reserve had alleged that it owned the '946 application until the transfer of all its rights to the '946 patent application to its wholly-owned subsidiary, Island IP, in December 2008.

131. The '946 application issued as the '350 patent on or about May 19, 2009. Upon information and belief, Island IP alleges that it owns the '350 patent.

132. Upon information and belief, the Reserve has filed several other U.S. patent applications that are related to the Reserve Patents, including U.S. Patent Applications Nos. 09/677,535; 10/305,439; 10/825,440; 11/149,278; 11/641,046; 11/689,247; 11/767,827; 11/767,837; 11/767,846; 11/767,856; 11/840,052; 11/840,060; 11/840,064; 11/932,762; 12/025,402; 12/271,705; 12/340,026, 12/408,507; 12/408,511, and 12/408,523 (collectively, "the Related Applications").

133. The alleged "inventions" of the Reserve Patents and the Related Applications that have been published include variations on deposit sweep services. The alleged "invention" of the patents also concerns the use of the well-established legal principle that a depositor may obtain FDIC insurance above the limit imposed upon a single depositor at a single institution by placing funds in more than one insured account. Accordingly, the Reserve Patents and Related Applications do not disclose and claim inventions.

134. The claimed methods and systems of the Reserve Patents and Related Applications are limited to making withdrawals and transfers from MMDAs and other insured deposit accounts to transaction accounts using one of the five specific methods identified in Regulation D -- namely, by mail, messenger, automated teller machine, by telephone (via check mailed to the depositor), or in person.



135. The Reserve Patents and Related Applications require the use of one of these five methods for making withdrawals and transfers from insured deposit accounts in an attempt to provide transaction accounts (e.g., brokerage accounts) that are not subject to Regulation D's limits on the number of withdrawals or transfers that a customer may make from an MMDA in a month. Specifically, each of the independent claims of the '551 patent calls for exceeding the transaction limits imposed by Regulation D. Because the Federal Reserve Board has determined that this arrangement does not comply with Regulation D, practicing the claimed methods and systems of the Reserve Patents and Related Applications violates applicable banking laws and regulations, including Regulation D.

**The Reserve Parties' Failure to Disclose Information  
About Prior Deposit Sweep Services to the PTO**

136. Upon information and belief, when the Reserve filed its patent applications with the PTO, the Reserve knew about deposit sweep services offered and used years ago by other financial institutions that were the same or similar in material respects to the claimed methods and systems of the Reserve's patent applications. These services include, without limitation, Merrill Lynch's Original 1983 CMA/ISA Service and 2000 CMA 2.0 Service. In addition, upon information and belief, when the Reserve filed its patent applications with the PTO, the Reserve knew about printed publications describing methods and systems for deposit sweep services that were published more than one year before the Reserve filed any of its patent applications.

137. Upon information and belief, during the prosecution of its patent applications before the PTO, the Reserve Parties failed to disclose or misrepresented information about these services, and the Reserve Parties failed to disclose, or made misrepresentations about, the printed publications describing deposit sweep services.

138. In addition, when the Reserve filed its patent applications, it knew about its own Reserve Insured Deposits service, which it has asserted is covered by the claims of one or more of the Reserve Patents and Related Applications. Upon information and belief, the Reserve sold, offered for sale, or publicly used one or more versions of the Reserve Insured Deposits service more than one year before the filing dates of each of its patent applications.

139. The Reserve failed to disclose to the PTO material information about the Reserve Insured Deposits service during the prosecution of the application that led to the '231 patent. Upon information and belief, the Reserve Parties also failed to disclose to the PTO, for several years during the pendency of the application that led to the '286 patent, and the '551 patent, material information about the Reserve Insured Deposits service. The Reserve eventually disclosed information about the Reserve Insured Deposits service in connection with this application, but only after it received letters from Promontory reminding the Reserve of its obligation to disclose such information, and even then, its disclosure was inadequate and misleading. Furthermore, while the Reserve belatedly disclosed information about the Reserve Insured Deposits service to the PTO, it denied selling, offering for sale, publicly using, and advertising the Reserve Insured Deposits service before October 21, 1997, when in fact a magazine publicly distributed in September 1997 contained an advertisement for the Reserve Insured Deposits service. After Promontory brought this to the Reserve's attention, the Reserve was forced to amend its pending patent applications.

140. More recently, the Reserve Parties continued the practice of failing to properly disclose prior art, and providing misleading statements to the PTO in the prosecution of the Reserve Patents and Related Applications. Promontory notified the Reserve Parties, in a letter dated February 23, 2009, that the Reserve had failed to disclose to the PTO relevant prior art in

the form of the Merrill Lynch Banking Advantage program ("the MLBA program"). In response, the Reserve Parties submitted a certification made by the Reserve Parties' patent attorney in the March 3, 2009, Information Disclosure Statement ("IDS") in U.S. Patent Application No. 10/071,053, in which the Reserve Parties disclosed two publications about the MLBA program. The certification stated that "to the knowledge of the undersigned, after making reasonable inquiry, no item of information contained in the [IDS] was known to any individual designated in 37 C.F.R. § 1.56(c) more than three months prior to the filing of the [IDS]." Bruce Bent II, one of the named inventors of the Reserve Patents and Related Applications, has recently admitted that he was aware of the MLBA program long before the certification, as evidenced by his comments about the program in a November 1, 2000 article in *On Wall Street*, and that the certification was "arguably incorrect." However, this admission occurred after the issue fee for the '551 patent was paid and the Reserve Parties have declined to take the appropriate and necessary steps to permit the PTO to consider the prior art and the correction.

**The Reserve Parties' Assertion of Its Alleged Patent Rights Against Promontory**

141. Since at least 2006, the Reserve has falsely asserted that Promontory's IND service practices one or more of the Reserve Patents and Related Applications. Until the fall of 2008, Reserve Management was the entity alleging that Promontory's IND service practices one or more of Reserve's Patents. However, right after the September 16, 2008 revelation that the Reserve Primary Fund, the Reserve Yield Plus Fund, and an off-shore Reserve fund registered in the British Virgin Islands had all fallen below the \$1-a-share net asset value (the "breaking-the-buck events"), and very shortly before the beginning of extensive securities litigation against, and the SEC investigation of, Reserve's management for alleged fraudulent activities, Reserve Management changed its name to Double Rock Corporation. Then, on October 10, 2008, the

newly-renamed Reserve Management formed two wholly-owned entities: Island IP and LIDs Capital. On December 4, 2008, Reserve Management assigned its entire patent portfolio to Island IP. Subsequently, Island IP granted an exclusive license for the Reserve Patents and related patent applications to LIDs Capital, which, in turn, granted a sublicense to the same patents back to Reserve Management.

142. Upon information and belief, Island IP appears to be nothing more than a patent-holding shell company created to hold Reserve's patents and licenses following the breaking-the-buck events. It is wholly-owned and controlled by Reserve Management. It operates out of the same office building in New York as Reserve Management and the other Reserve entities. It does not appear to have conducted much, if any, business.

143. The Reserve sent a letter dated May 24, 2006 to Promontory regarding the '231 patent, the application that led to the '286 patent, the '551 patent, and some of the Related Applications. The letter stated that its purpose is "to advise [Promontory] of certain intellectual property rights owned by the Reserve which may be of interest to Promontory in connection with its Promontory Deposit Sweep Service or other FDIC insured money market account processing services." The letter further stated that "[t]he Reserve would be willing to license, on reasonable and competitive rates, its rights in the '231 Patent," the application that led to the '286 patent, the '551 patent, certain other applications, and "the remainder of its patent portfolio." This letter, in seeking to induce Promontory to pay royalties under the '231 patent, failed to disclose that the '231 patent had been surrendered for reissue proceedings two years earlier on the ground that, according to each of the alleged inventors, the '231 claims "cover[ed] more that I had a right to claim."

144. Promontory responded to the Reserve's May 24, 2006, letter in a letter dated June 30, 2006. In this letter, Promontory stated, among other things, that it "does not practice The Reserve's claimed invention and does not wish to do so." Nevertheless, Promontory noted that "[i]f [the Reserve] believes that Promontory for some reason is required to be licensed, [Promontory] would appreciate receiving a detailed explanation of the basis for its belief." Promontory also pointed out Reserve's failure to disclose the '231 patent reissue proceedings and "raise[d] the question whether [Reserve Management] is subject to a charge of bad faith in the patent's attempted use." Promontory further noted that the '231 patent and its related applications "appear to employ and describe methods and systems intended to circumvent, if not violate, federal regulatory requirements."

145. The Reserve's responsive letter dated July 12, 2006, stated that "Promontory's exposure to the published claims of the pending applications has already commenced to the extent it practices such claims and claims commensurate in scope ultimately issue from the U.S. Patent and Trademark Office, as we believe will occur." Reserve also stated that "the mere fact that a reissue proceeding is pending does not make the '231 Patent worthless" and that "[w]e also cannot guarantee that, [after the reissue proceedings are complete], Reserve Management will still be interested in licensing the Reissue version of the '231 Patent" if Promontory did not take a license under the original version.

146. In a responsive letter dated July 18, 2006, Promontory reaffirmed that "it has no interest in [the Reserve's deposit sweep] methods or systems."

147. After learning of the reissue proceedings, Promontory further examined Reserve Management's assertions about its patent "portfolio." On October 4, 2006, Promontory responded by pointing out that Reserve Management had failed to notify the PTO that the

alleged invention was on sale or in public use more than a year prior to the filing of the application. Specifically, Promontory explained that Reserve Management's registered service mark for its alleged invention—Reserve Insured Deposits®—claimed a first use in commerce of October 9, 1997, more than one year prior to the October 21, 1998 filing date for the '231 patent. Accordingly, the alleged invention was barred under 35 U.S.C. § 102(b).

148. In a follow-up letter dated October 11, 2006, Promontory informed Reserve Management of additional failures by Reserve Management to disclose its commercial activities, as well as the duty to disclose the information in related applications, such as U.S. Patent Application No. 09/677,535 ("the '535 Application").

149. On October 17, 2006, instead of making an honest disclosure to the PTO, Reserve Management filed a "correction" to its service mark registration, in which inventor Bruce Bent II *swears forward* that the first use in commerce of the product was actually December 1997, thereby avoiding the Section 102(b) bar date.

150. Upon seeing the new declaration from Mr. Bent, Promontory wrote to Reserve Management on November 1, 2006, pointing out that the Bent declaration was inconsistent with an attached article that stated, "The Reserve Funds, a pioneer in the money fund industry, began offering its Reserve Insured Deposits in August 1997" – well before the 102(b) bar date and the December 1997 date Mr. Bent was now claiming.

151. On February 27, 2007, nearly four months after Promontory provided Reserve Management with evidence of the falsity of Mr. Bent's declaration, Reserve Management finally submitted another declaration from Bruce Bent II, informing the PTO that there was an "error" in the October 17, 2006 declaration, and that, in fact, "an advertisement from The Reserve for 'an insured money market account with free, unlimited, no minimum checking' appeared in an

October 1997 issue of MUTUAL FUNDS, and actually was received in libraries in September 1997.”

152. In a letter dated March 2, 2007, the Reserve referred to publications of the application that led to the '286 patent and another application, and the Reserve asserted that Promontory practices the claims of these applications. The letter stated, “We continue to expect that claims commensurate in scope with the claims included in these published applications as well as the prior published applications identified in our earlier correspondence will be issuing in the near future. We believe that [Promontory] should reconsider its current conduct and the irreparable harm such conduct is causing The Reserve through, among other things, the price erosion caused by [Promontory's] pricing practices and [Promontory's] sale of competitive products coming within the scope of these claims.”

153. Promontory responded to the Reserve's March 2, 2007 letter in a letter dated May 1, 2007. In this letter, Promontory urged the Reserve to “proceed with caution with these allegations, as any reasonable investigation will lead to the conclusion that there is no good faith basis for asserting that Promontory's conduct falls within the scope of any valid and enforceable claim.” Promontory also observed in this letter that “every claim of The Reserve's pending applications that the PTO has examined currently stands rejected.”

154. Most recently, in a letter to Promontory's counsel dated March 10, 2009, the Reserve Parties reiterated their allegation that Promontory was wrongly using the purported inventions claimed in the '231 patent, the application for the '286 patent, and the '551 patent, as well as the pending Related Applications, reciting:

[Y]our June 30, 2006 letter which categorically denied Promontory's use of the claimed invention and incorrectly asserted that the '231 Patent and the pending patent applications “circumvent, if not violate, federal regulatory requirements.” Your client, or at least its banking counsel, should have realized that both of these assertions were untrue. [...]

Since that time, your client's willful misappropriation of Double Rock's inventions to compete with Double Rock has resulted in substantial harm to Double Rock, including the loss of several clients, and has eroded Double Rock's profits on the products it has been able to sell.

155. The Reserve Parties have never provided Promontory with any explanation of its assertion that Promontory's IND service practices the Reserve Patents and Related Applications. Moreover, in its assertions of infringement regarding the '231 patent, Reserve has attempted to enforce its patent beyond the limits of what the patent actually claims.

156. The Reserve's assertions were and are objectively baseless because no reasonable litigant could expect to succeed on a claim that IND infringes any of the Reserve Patents and Applications for at least the following reasons: (a) the IND service does not make withdrawals or transfers from MMDAs using one of the five methods identified in Regulation D, which are required to be used by the Reserve Patents and Related Applications; (b) the Reserve Patents and Related Applications are invalid in light of the Reserve Parties' own deposit sweep service, the prior deposit sweep services of other financial institutions, the printed publications identified herein, and other prior art; (c) the Reserve Patents and Related Applications are invalid under 35 U.S.C. §§ 101 and 112 because the claimed methods and systems are inoperable because they are illegal under the banking laws and regulations; and (d) the Reserve Patents and Related Applications are unenforceable due to inequitable conduct, described more fully below.

#### **The Reserve's Interference with Promontory's Business Relationships**

157. Since at least 2006, the Reserve has interfered with Promontory's actual and potential business relationships relating to IND, and has attempted to stifle competition by driving Promontory out of the market. Among other things, the Reserve has made false assertions to Promontory's actual and prospective clients and service providers that IND practices one or more of the Reserve Patents and Applications.



158. For example, the Reserve has communicated with Linsco/Private Ledger Corporation (“LPL”), Dreyfus Corporation (“Dreyfus”), Oppenheimer & Co., Inc. (“Oppenheimer”), Reich & Tang Asset Management, LLC (“Reich & Tang”), and A.G. Edwards & Sons, Inc. (“A.G. Edwards”). Upon information and belief, at the time the Reserve made each such communication, the Reserve knew or should have known the third party was an actual or prospective client of Promontory’s IND service and/or had a business relationship with Promontory relating to IND.

159. In the Reserve’s communications, it has identified some or all of the Reserve Patents and Related Applications, and has asserted or suggested that Promontory’s IND service, the use thereof, or the provision of services in relation thereto, practices one or more of the Reserve Patents and Related Applications. The Reserve has further stated to some of these third parties that liability for patent infringement on the part of the third party may have already commenced. Some of the communications have invited the recipient to commence a business relationship with the Reserve for the provision of deposit sweep services.

160. For example, on July 17, 2007, in a letter to Dreyfus, Reserve warned that “Dreyfus may be liable as a patent infringer for damages accrued from the date of our first correspondence, even prior to the issuance of the patent claims.” In effort to exclude Promontory from the market, Reserve further stated that “[t]o the extent that Dreyfus has no vested interest in using Promontory Interfinancial Network, LLC’s services, we encourage Dreyfus to reconsider its choice of vendor and examine the high quality products and services that The Reserve can provide.”

161. Other examples of the Reserve’s threats against Promontory’s clients and prospective clients include letters to Oppenheimer and Reich & Tang, both on September 5,

2007, in which the Reserve touted its '231 patent, asked both companies to "carefully consider" their continued use of the Promontory system in view of the Reserve's "portfolio of patent applications," and referring to each company as a "patent infringer."

162. As part of its attempts to enforce the '231 patent by threatening Promontory's clients and prospective clients, the Reserve has repeatedly asserted that its patent covers services that are beyond the scope of what the patent actually claims.

163. These false and misleading statements to Promontory's clients, prospective clients, and service providers have harmed Promontory by, among other things, causing it to lose A.G. Edwards' and other potential clients' deposit sweep business, incur expenses to repair these business relationships, consummate business transactions, correct misimpressions caused by the false statements, and restore the goodwill associated with its IND service.

164. Even since the Reserve initially filed its lawsuits against Promontory and others in this District, the Reserve has continued to engage in exclusionary conduct by reaching out to Promontory's clients and prospective clients and making false statements to them regarding Promontory's alleged infringement of the Reserve's patents and the scope of the Reserve's deposit sweep products and services. In doing so, Reserve has driven customers away from Promontory.

165. In making false and misleading statements to Promontory's clients, prospective clients, and service providers, the Reserve has attempted to exclude Promontory and others from the market for deposit sweep services and stifle competition in the deposit sweep industry.

#### **The Reserve's False and Misleading Statements in the Marketplace**

166. The Reserve has, on several occasions, made statements in the marketplace, such as those contained in press releases, that misrepresent the scope of technology purportedly covered by its patents, and has made false statements regarding its products. For example, as set

out more fully below, in press releases heralding the '286 and '551 patents being issued to Island IP, the Reserve made numerous statements that falsely overstate the scope of technology covered by these two patents.

167. In press releases dated March 30, 2009 and April 14, 2009, the Reserve falsely claimed that it "invented the first FDIC-insured sweep program over a decade ago," even though it knew that Merrill Lynch has offered deposit sweep services since at least 1983.

168. Also in the March 30, 2009 press release, in touting the '286 patent, the Reserve claimed that: the '286 patent "is related to the FDIC-insured sweep technology that Double Rock pioneered in late 1997," and made the following claims about its technology:

"This is a very significant day for us," said John Drahzal, Managing Director of LIDs Capital LLC, a wholly owned subsidiary of Double Rock that will utilize the newly issued patent and offer its Liquid Insured Deposits<sup>SM</sup> program to brokerage clients. "We have been creating value for our brokerage clients since we invented the first FDIC-insured sweep program over a decade ago. Receiving this patent for our unique multi-bank tiering functionality is a fitting reward for innovation for which we are extremely proud."

The Liquid Insured Deposits<sup>SM</sup> program enables brokerage clients to have up to \$2.5 million of their cash holdings insured by the FDIC through one convenient account. It also enables broker-dealers, clearing firms and their correspondents to offer tiered interest rates. The ability to offer tiered interest rates enables broker-dealers to reward customers based on total assets under management instead of simply cash balances. The structure enables flexibility and discretion in determining rates paid, recognizing the profitability of an account.

"Our clients recognize the importance of offering an FDIC-insured sweep with a tiering option. Having been issued the patent reinforces our leadership in this space and the strength of the service that we provide our partners and ultimately their clients," Drahzal added.

169. In a related press release regarding the '286 patent dated March 24, 2009, the Reserve's own counsel was quoted as stating, "We are very pleased that Island IP has been issued the patent on the Insured Deposits Program." The March 24 press release also made

claims regarding Double Rock's "Insured Deposits Program" that were nearly identical to those made in the March 30 press release regarding the "Liquid Insured Deposits<sup>SM</sup> program."

170. The Reserve's statements in its March 24 and 30 press releases are false and misleading because they overstate the scope of the technology covered by the '286 patent.

171. In its April 14, 2009 press release, which touted the '551 patent, the Reserve claimed that "[t]he '551 patent is related to the Insured Deposits Program sweep technology that Double Rock pioneered in 1997," and made the following claims about its technology:

"We have been creating value for the brokerage industry since we invented the first FDIC-insured sweep program over a decade ago," said John Drazhal, Managing Director of LIDs Capital LLC, a wholly owned subsidiary of Double Rock. "Receiving this patent clearly demonstrates our leadership in this space and reinforces the strength of our Liquid Insured Deposits<sup>SM</sup> program that supports our partners and their clients."

The Liquid Insured Deposits program enables brokerage clients to have up to \$2.5 million of their cash holdings insured by the FDIC through one convenient account. The '551 patent comes on the heels of Double Rock's Patent 7,509,286 (the "'286 Patent"), which was granted on March 24, 2009. The '286 Patent, "Systems and Methods for Money Fund Banking, with Flexible Interest Allocation", is related to the technology that enables brokers to offer tiered interest rates within the insured sweep offering.

Drazhal adds, "FDIC-insured sweeps will undoubtedly be the favored sweep option of the future. They are appropriate for clients seeking safety, which has been paramount given the market environment, and it helps our partners to be more competitive in what they offer their end clients. Having been awarded the patents clearly strengthens our offering for the hundreds of thousands of investors it has served over the years."

172. In a related press release regarding the '551 patent dated April 15, 2009, the Reserve's own counsel was quoted as stating, "We are pleased that Island IP has been granted the '551 patent. This in conjunction with the '286 patent underscores Double Rock's innovation and contribution to the financial services industry." The April 15 press release also made claims regarding Double Rock's "Insured Deposits Program" that were identical to those made in the April 14 press release regarding the "Liquid Insured Deposits<sup>SM</sup> program."

173. The Reserve's statements in its April 14 and 15 press releases are false and misleading because they overstate the scope of the technology covered by the '551 patent.

174. In its March 24 and April 15 press releases, the Reserve also noted the various lawsuits it has filed in this Court "seeking to enforce" the '286 patent and the '551 patent.

175. In making false and misleading statements in the marketplace, the Reserve has attempted to exclude Promontory and others from the market and stifle competition in the deposit sweep industry.

## **COUNTERCLAIMS**

### **COUNT I**

#### **Declaratory Judgment of Non-Infringement of the '231 Patent**

176. The allegations contained in paragraphs numbered 90 through 175 are incorporated by reference herein with the same force and effect as if set forth in full below.

177. Promontory does not infringe, directly or indirectly, any claim of the '231 patent.

178. An actual and justiciable controversy exists between Promontory and the Reserve Parties as to whether Promontory infringes any claim of the '231 patent. This controversy is of sufficient immediacy and reality to warrant the issuance of a declaratory judgment.

179. Pursuant to 28 U.S.C. §§ 2201 and 2202, Promontory is entitled to a declaratory judgment that it does not infringe any claim of the '231 patent, and any other relief that the Court deems necessary or proper.

180. This is an exceptional case under 35 U.S.C. § 285, entitling Promontory to an award of its attorneys' fees incurred in connection with this action.

## **COUNT II**

### **Declaratory Judgment of Invalidity of the '231 Patent**

181. The allegations contained in paragraphs numbered 90 through 180 are incorporated by reference herein with the same force and effect as if set forth in full below.

182. Each and every claim of the '231 patent is invalid under one or more of the provisions of Title 35 of the United States Code, including without limitation one or more of 35 U.S.C. §§ 101, 102, 103, 112, 116, and 135.

183. An actual and justiciable controversy exists between Promontory and the Reserve Parties as to whether each claim of the '231 patent is invalid. This controversy is of sufficient immediacy and reality to warrant the issuance of a declaratory judgment.

184. Pursuant to 28 U.S.C. §§ 2201 and 2202, Promontory is entitled to a declaratory judgment that each claim of the '231 patent is invalid, and any other relief that the Court deems necessary or proper.

185. This is an exceptional case under 35 U.S.C. § 285, entitling Promontory to an award of its attorneys' fees incurred in connection with this action.

## **COUNT III**

### **Declaratory Judgment of Unenforceability of the '231 Patent**

186. The allegations contained in paragraphs numbered 90 through 185 are incorporated by reference herein with the same force and effect as if set forth in full below.

187. The '231 patent is unenforceable because one or more persons involved in the prosecution of the application that led to the '231 patent or applications related to the '231 patent committed inequitable conduct. Upon information and belief, with the intent to deceive the PTO, the Reserve Parties, the named inventors, or attorneys, agents or representatives of the Reserve Parties breached the duty of candor, good faith, and honesty in prosecuting these

applications by submitting false or misleading information, misrepresenting information, or failing to disclose information material to the patentability of the claimed inventions.

188. Upon information and belief, during the prosecution of the application that led to the '231 patent, the Reserve, the named inventors, or attorneys, agents or representatives of the Reserve, misrepresented or failed to disclose to the PTO material information about the Reserve Insured Deposits service. Upon information and belief, the Reserve Insured Deposits service was on sale and/or in public use more than one year prior to the date of the application that resulted in the '231 patent, or the Reserve Insured Deposits service otherwise constitutes prior art with respect to the '231 patent under 35 U.S.C. § 102. The Reserve has asserted that its Reserve Insured Deposits service embodies one or more claims of the '231 patent, and, for at least this reason, information about the service was material to the patentability of one or more of the claims of the application. Upon information and belief, the Reserve, the named inventors, or attorneys, agents or representatives of the Reserve misrepresented or failed to disclose material information about the Reserve Insured Deposits service with the intent to deceive the PTO. This constitutes inequitable conduct and renders the '231 patent unenforceable.

189. Upon information and belief, during the prosecution of the application that led to the '231 patent, the Reserve, the named inventors, or attorneys, agents or representatives of the Reserve misrepresented or failed to disclose material information to the PTO about the Original 1983 CMA/ISA Service. The Original 1983 CMA/ISA Service was on sale and/or in public use more than one year prior to the date of the application that resulted in the '231 patent, and information about the service was material to the patentability of one or more of the claims of the application. Upon information and belief, with the intent to deceive the PTO, the Reserve, the named inventors, or attorneys, agents or representatives of the Reserve were aware of material

information about the Original 1983 CMA/ISA Service during the prosecution of the application that resulted in the '231 patent and misrepresented or failed to disclose material information about the Original 1983 CMA/ISA Service. This constitutes inequitable conduct and renders the '231 patent unenforceable.

190. Upon information and belief, during the prosecution of the application that led to the '231 patent, the Reserve, the named inventors, or attorneys, agents or representatives of the Reserve failed to disclose certain printed publications describing deposit sweep services, including without limitation: a letter from William W. Wiles, Secretary of the Federal Reserve Board, dated June 22, 1983; a letter from Michael Bradfield, General Counsel of the Federal Reserve Board, dated November 16, 1984; and letters from Oliver I. Ireland, Associate General Counsel of the Federal Reserve Board, dated June 22, 1988, February 7, 1995, August 1, 1995, August 30, 1995, and October 18, 1996. Each of these printed publications was material to the patentability of one or more of the claims of the application that resulted in the '231 patent. Upon information and belief, with the intent to deceive the PTO, the Reserve, the named inventors, or attorneys, agents or representatives of the Reserve were aware of each of these printed publications during the prosecution of the application and failed to disclose the publications. This constitutes inequitable conduct and renders the '231 patent unenforceable.

191. Upon information and belief, but for the Reserve's intentional deception, the PTO would not have issued the '231 patent.

192. An actual and justiciable controversy exists between Promontory and the Reserve Parties as to whether the '231 patent is unenforceable. This controversy is of sufficient immediacy and reality to warrant the issuance of a declaratory judgment.



193. Pursuant to 28 U.S.C. §§ 2201 and 2202, Promontory is entitled to a declaratory judgment that the '231 patent is unenforceable, and any other relief that the Court deems necessary or proper.

194. This is an exceptional case under 35 U.S.C. § 285, entitling Promontory to an award of its attorneys' fees incurred in connection with this action.

#### **COUNT IV**

##### **Declaratory Judgment of Non-Infringement of the '286 Patent**

195. The allegations contained in paragraphs numbered 90 through 194 are incorporated by reference herein with the same force and effect as if set forth in full below.

196. Promontory does not infringe, directly or indirectly, any claim of the '286 patent.

197. An actual and justiciable controversy exists between Promontory and the Reserve Parties as to whether Promontory infringes any claim of the '286 patent. This controversy is of sufficient immediacy and reality to warrant the issuance of a declaratory judgment.

198. Pursuant to 28 U.S.C. §§ 2201 and 2202, Promontory is entitled to a declaratory judgment that it does not infringe any claim of the '286 patent, and any other relief that the Court deems necessary or proper.

199. This is an exceptional case under 35 U.S.C. § 285, entitling Promontory to an award of its attorneys' fees incurred in connection with this action.

#### **COUNT V**

##### **Declaratory Judgment of Invalidity of the '286 Patent**

200. The allegations contained in paragraphs numbered 90 through 199 are incorporated by reference herein with the same force and effect as if set forth in full below.

201. Each and every claim of the '286 patent is invalid under one or more of the provisions of Title 35 of the United States Code, including without limitation one or more of 35 U.S.C. §§ 101, 102, 103, 112, 116, and 135.

202. An actual and justiciable controversy exists between Promontory and the Reserve Parties as to whether each claim of the '286 patent is invalid. This controversy is of sufficient immediacy and reality to warrant the issuance of a declaratory judgment.

203. Pursuant to 28 U.S.C. §§ 2201 and 2202, Promontory is entitled to a declaratory judgment that each claim of the '286 patent is invalid, and any other relief that the Court deems necessary or proper.

204. This is an exceptional case under 35 U.S.C. § 285, entitling Promontory to an award of its attorneys' fees incurred in connection with this action.

## **COUNT VI**

### **Declaratory Judgment of Unenforceability of the '286 Patent**

205. The allegations contained in paragraphs numbered 90 through 204 are incorporated by reference herein with the same force and effect as if set forth in full below.

206. The '286 patent is unenforceable because one or more persons involved in the prosecution of the application that led to the '286 patent or applications related to the '286 patent committed inequitable conduct. Upon information and belief, with the intent to deceive the PTO, the Reserve Parties, the named inventors, or attorneys, agents or representatives of the Reserve Parties breached the duty of candor, good faith, and honesty in prosecuting these applications by submitting false or misleading information, misrepresenting information, or failing to disclose information material to the patentability of the claimed inventions.

207. Upon information and belief, during the prosecution of the applications that led to the '286 patent, the Reserve Parties, the named inventors, or attorneys, agents or representatives

of the Reserve Parties, misrepresented or failed to disclose to the PTO material information about the Original 1983 CMA/ISA Service. The Original 1983 CMA/ISA Service was on sale and/or in public use more than one year prior to the date of application of the '286 patent, and information about the Original 1983 CMA/ISA Service was material to the patentability of one or more of the claims of the application that resulted in the '286 patent. Upon information and belief, during the prosecution of the application that led to the '286 patent, with the intent to deceive the PTO, the Reserve Parties, the named inventors, or attorneys, agents or representatives of the Reserve Parties were aware of material information about the Original 1983 CMA/ISA Service and misrepresented or failed to disclose material information about the Original 1983 CMA/ISA Service. This constitutes inequitable conduct and renders the '286 patent unenforceable.

208. Upon information and belief, during the prosecution of the applications that led to the '286 patent, the Reserve Parties, the named inventors, or attorneys, agents or representatives of the Reserve Parties misrepresented or failed to disclose to the PTO material information about the 2000 CMA 2.0 Service. The 2000 CMA 2.0 Service was on sale and/or in public use, and described in printed publications, before the alleged invention of the '286 patent or otherwise constitutes prior art under 35 U.S.C. § 102, and information about the service was material to the patentability of one or more of the claims of the application that resulted in the '286 patent. Upon information and belief, during the prosecution of the application that led to the '286 patent, with the intent to deceive the PTO, the Reserve Parties, the named inventors, or attorneys, agents or representatives of the Reserve Parties were aware of material information about the 2000 CMA 2.0 Service and misrepresented or failed to disclose material information about the 2000

CMA 2.0 Service. This constitutes inequitable conduct and renders the '286 patent unenforceable.

209. Upon information and belief, during the prosecution of the applications that led to the '286 patent, the Reserve Parties, the named inventors, or attorneys, agents or representatives of the Reserve Parties misrepresented or failed to disclose to the PTO material information about the MLBA program. The MBLA program was on sale and/or in public use, and described in printed publications, before the alleged invention of the '286 patent or otherwise constitutes prior art under 35 U.S.C. § 102, and information about the service was material to the patentability of one or more of the claims of the application that resulted in the '286 patent. Upon information and belief, during the prosecution of the application that led to the '286 patent, with the intent to deceive the PTO, the Reserve Parties, the named inventors, or attorneys, agents or representatives of the Reserve Parties were aware of material information about the MLBA program and misrepresented or failed to disclose material information about the MLBA program. This constitutes inequitable conduct and renders the '286 patent unenforceable.

210. Upon information and belief, during the prosecution of the applications that led to the '286 patent, the Reserve Parties, the named inventors, or attorneys, agents or representatives of the Reserve Parties failed to disclose, or made misrepresentations about, certain printed publications describing deposit sweep services, including without limitation: a letter from William W. Wiles, Secretary of the Federal Reserve Board, dated June 22, 1983; a letter from Michael Bradfield, General Counsel of the Federal Reserve Board, dated November 16, 1984; and letters from Oliver I. Ireland, Associate General Counsel of the Federal Reserve Board, dated June 22, 1988, February 7, 1995, August 1, 1995, August 30, 1995, and October 18, 1996. Each of these printed publications was material to the patentability of one or more of the claims

of the application that resulted in the '286 patent. Upon information and belief, during the prosecution of the application that led to the '286 patent, with the intent to deceive the PTO, the Reserve Parties, the named inventors, or attorneys, agents or representatives of the Reserve Parties were aware of each of these printed publications and failed to disclose, or made misrepresentations about, the publications. This constitutes inequitable conduct and renders the '286 patent unenforceable.

211. Upon information and belief, but for the Reserve's intentional deception, the PTO would not have issued the '286 patent.

212. The inequitable conduct committed in connection with the prosecution of the '231 patent also renders the '286 patent unenforceable, because this inequitable conduct relates to the claims of the '286 patent.

213. An actual and justiciable controversy exists between Promontory and the Reserve Parties as to whether each claim of the '286 patent is unenforceable. This controversy is of sufficient immediacy and reality to warrant the issuance of a declaratory judgment.

214. Pursuant to 28 U.S.C. §§ 2201 and 2202, Promontory is entitled to a declaratory judgment that each claim of the '286 patent is unenforceable, and any other relief that the Court deems necessary or proper.

215. This is an exceptional case under 35 U.S.C. § 285, entitling Promontory to an award of its attorneys' fees incurred in connection with this action.

## **COUNT VII**

### **Declaratory Judgment of Non-Infringement of the '551 Patent**

216. The allegations contained in paragraphs numbered 90 through 215 are incorporated by reference herein with the same force and effect as if set forth in full below.

217. Promontory does not infringe, directly or indirectly, any valid and enforceable claim of the '551 patent.

218. An actual and justiciable controversy exists between Promontory and the Reserve Parties as to whether Promontory infringes any valid and enforceable claim of the '551 patent. This controversy is of sufficient immediacy and reality to warrant the issuance of a declaratory judgment.

219. Pursuant to 28 U.S.C. §§ 2201 and 2202, Promontory is entitled to a declaratory judgment that it does not infringe any valid and enforceable claim of the '551 patent, and any other relief that the Court deems necessary or proper.

220. This is an exceptional case under 35 U.S.C. § 285, entitling Promontory to an award of its attorney's fees incurred in connection with this action.

#### **COUNT VIII**

##### **Declaratory Judgment of Invalidity of the '551 Patent**

221. The allegations contained in paragraphs numbered 90 through 220 are incorporated by reference herein with the same force and effect as if set forth in full below.

222. Each and every claim of the '551 patent is invalid under one or more of the provisions of Title 35 of the United States Code, including without limitation one or more of 35 U.S.C. §§ 101, 102, 103, 112, 116, and 135.

223. An actual and justiciable controversy exists between Promontory and the Reserve Parties as to whether each claim of the '551 patent is invalid. This controversy is of sufficient immediacy and reality to warrant the issuance of a declaratory judgment.

224. Pursuant to 28 U.S.C. §§ 2201 and 2202, Promontory is entitled to a declaratory judgment that each claim of the '551 patent is invalid, and any other relief that the Court deems necessary or proper.

225. This is an exceptional case under 35 U.S.C. § 285, entitling Promontory to an award of its attorneys' fees incurred in connection with this action.

### **COUNT IX**

#### **Declaratory Judgment of Unenforceability of the '551 Patent**

226. The allegations contained in paragraphs numbered 90 through 225 are incorporated by reference herein with the same force and effect as if set forth in full below.

227. The '551 patent is unenforceable because one or more persons involved in the prosecution of the applications that led to the '551 patent or applications related to the '551 patent committed inequitable conduct. Upon information and belief, with the intent to deceive the PTO, the Reserve Parties, the named inventors, or attorneys, agents or representatives of the Reserve Parties breached the duty of candor, good faith, and honesty in prosecuting these applications by submitting false or misleading information, misrepresenting information, or failing to disclose information material to the patentability of the claimed inventions.

228. Upon information and belief, during the prosecution of one or more applications that led to the '551 patent, the Reserve Parties, the named inventors, or attorneys, agents or representatives of the Reserve Parties misrepresented or failed to disclose to the PTO material information about the Original 1983 CMA/ISA Service. The Original 1983 CMA/ISA Service was on sale and/or in public use more than one year prior to the date of application of the '551 patent, and information about the Original 1983 CMA/ISA Service was material to the patentability of one or more of the claims of the application that resulted in the '551 patent. Upon information and belief, during the prosecution of one or more applications that led to the '551 patent, with the intent to deceive the PTO, the Reserve Parties, the named inventors, or attorneys, agents or representatives of the Reserve Parties were aware of material information about the Original 1983 CMA/ISA Service and misrepresented or failed to disclose material

information about the Original 1983 CMA/ISA Service. This constitutes inequitable conduct and bears an immediate and necessary relation to the prosecution of the '551 patent, rendering it unenforceable.

229. Upon information and belief, during the prosecution of one or more applications that led to the '551 patent, the Reserve Parties, the named inventors, or attorneys, agents or representatives of the Reserve Parties misrepresented or failed to disclose to the PTO material information about the 2000 CMA 2.0 Service. The 2000 CMA 2.0 Service was on sale and/or in public use, and described in printed publications, before the alleged invention of the '551 patent or otherwise constitutes prior art under 35 U.S.C. § 102, and information about the service was material to the patentability of one or more of the claims of the application that resulted in the '551 patent. Upon information and belief, during the prosecution of one or more applications that led to the '551 patent, with the intent to deceive the PTO, the Reserve Parties, the named inventors, or attorneys, agents or representatives of the Reserve Parties were aware of material information about the 2000 CMA 2.0 Service and misrepresented or failed to disclose material information about the 2000 CMA 2.0 Service. This constitutes inequitable conduct and bears an immediate and necessary relation to the prosecution of the '551 patent, rendering it unenforceable.

230. Upon information and belief, during the prosecution of one or more applications that led to the '551 patent, the Reserve Parties, the named inventors, or attorneys, agents or representatives of the Reserve Parties misrepresented or failed to disclose to the PTO material information about the MLBA program. The MLBA program was on sale and/or in public use, and described in printed publications, before the alleged invention of the '551 patent or otherwise constitutes prior art under 35 U.S.C. § 102, and information about the service was



material to the patentability of one or more of the claims of the application that resulted in the '551 patent. Upon information and belief, during the prosecution of one or more applications that led to the '551 patent, with the intent to deceive the PTO, the Reserve Parties, the named inventors, or attorneys, agents or representatives of the Reserve Parties were aware of material information about the MLBA program and misrepresented or failed to disclose material information about the MLBA program. This constitutes inequitable conduct and bears an immediate and necessary relation to the prosecution of the '551 patent, rendering it unenforceable.

231. Upon information and belief, during the prosecution of one or more applications that led to the '551 patent, the Reserve Parties, the named inventors, or attorneys, agents or representatives of the Reserve Parties failed to disclose, or made misrepresentations about, certain printed publications describing deposit sweep services, including without limitation: a letter from William W. Wiles, Secretary of the Federal Reserve Board, dated June 22, 1983; a letter from Michael Bradfield, General Counsel of the Federal Reserve Board, dated November 16, 1984; and letters from Oliver I. Ireland, Associate General Counsel of the Federal Reserve Board, dated June 22, 1988, February 7, 1995, August 1, 1995, August 30, 1995, and October 18, 1996. Each of these printed publications was material to the patentability of one or more of the claims of the application that resulted in the '551 patent. Upon information and belief, during the prosecution of one or more applications that led to the '551 patent, with the intent to deceive the PTO, the Reserve Parties, the named inventors, or attorneys, agents or representatives of the Reserve Parties were aware of each of these printed publications and failed to disclose, or made misrepresentations about, the publications. This constitutes inequitable conduct and bears an

immediate and necessary relation to the prosecution of the '551 patent, rendering it unenforceable.

232. Upon information and belief, but for the Reserve's intentional deception, the PTO would not have issued the '551 patent.

233. The inequitable conduct committed in connection with the prosecution of the '231 patent and the '286 patent also renders the '551 patent unenforceable, because this inequitable conduct has an immediate and necessary relation to the claims of the '551 patent.

234. An actual and justiciable controversy exists between Promontory and the Reserve Parties as to whether each claim of the '551 patent is unenforceable. This controversy is of sufficient immediacy and reality to warrant the issuance of a declaratory judgment.

235. Pursuant to 28 U.S.C. §§ 2201 and 2202, Promontory is entitled to a declaratory judgment that each claim of the '551 patent is unenforceable, and any other relief that the Court deems necessary or proper.

236. This is an exceptional case under 35 U.S.C. § 285, entitling Promontory to an award of its attorney's fees incurred in connection with this action.

## **COUNT X**

### **Tortious Interference with Business Relations**

237. The allegations contained in paragraphs numbered 90 through 236 are incorporated by reference herein with the same force and effect as if set forth in full below.

238. The Reserve has provided deposit sweep services that competed with Promontory's IND service.

239. Promontory has and has had valid present and prospective business relationships or expectancies with third parties relating to the IND service ("IND Third Parties"), including, without limitation, LPL, Drefyus, Oppenheimer, Reich & Tang, and A.G. Edwards. These

business relationships or expectancies bore or bear a probability of future economic benefit to Promontory.

240. The Reserve knew and continues to know of the existence of Promontory's business relationships and expectancies.

241. Despite this knowledge, the Reserve has falsely and misleadingly asserted to IND Third Parties that Promontory's IND service practices one or more of the Reserve Patents and Applications. In addition, the Reserve has falsely and misleadingly asserted to IND Third Parties that they may incur liability for infringement of one or more of these patents, and these applications if and when they issue, by using the IND service or by continuing their business relationships with Promontory. Upon information and belief, the Reserve made these false assertions with the intent to interfere with Promontory's actual and prospective business relationships and expectancies.

242. The Reserve's actions were and are without privilege or justification, and the Reserve employed improper methods in its interference, including misrepresentations, deceit, defamation, unfair competition, and baseless assertions of legal rights. Upon information and belief, the Reserve made the false and misleading assertions described above in bad faith, and the Reserve knew or should have known that such assertions were false and objectively baseless.

243. The Reserve made these false and misleading assertions to A.G. Edwards in 2007 when Promontory and the Reserve were each in discussions with A.G. Edwards to provide services in support of A.G. Edwards' deposit sweep arrangement. At the time the Reserve made these false and misleading assertions to A.G. Edwards, the Reserve knew or should have known that Promontory was in discussions with A.G. Edwards. As a result of the Reserve's false and misleading assertions, A.G. Edwards decided not to use Promontory's services and terminated

discussions with Promontory, and A.G. Edwards selected the Reserve to provide such services. But for the Reserve's conduct, A.G. Edwards would not have rejected Promontory to provide such services.

244. As a result of the Reserve's conduct, Promontory's goodwill with the IND Third Parties has been diminished, and the Reserve has attempted, and will continue to attempt, to divert business to the Reserve that would have gone to Promontory. Further, the Reserve's conduct has caused Promontory to lose business, incur expenses to repair business relationships, consummate business transactions, correct misimpressions caused by the false statements, and restore the goodwill associated with the IND service.

245. The foregoing conduct by the Reserve constitutes tortious interference with Promontory's business relationships and expectancies.

246. As a consequence of the foregoing, Promontory has suffered and will continue to suffer irreparable harm and loss. Unless enjoined as requested herein, the Reserve will persist in its wrongful and unlawful activities, and Promontory will be irreparably harmed.

247. In addition, Promontory has been and continues to be damaged by the Reserve's actions, and Promontory seeks judgment against the Reserve in an amount to be determined at trial.

## **COUNT XI**

### **Unfair Competition under Applicable State Law**

248. The allegations contained in paragraphs numbered 90 through 247 are incorporated by reference herein with the same force and effect as if set forth in full below.

249. The Reserve has provided deposit sweep services that competed with Promontory's IND service.

250. The Reserve has falsely and misleadingly asserted in the marketplace for deposit sweep services that the IND service practices one or more of the Reserve Patents and Related Applications. In addition, the Reserve has falsely and misleadingly asserted to IND customers, users, and service providers that they may incur liability for infringement of one or more of these patents, and these applications if and when they issue, by using the IND service. The Reserve has also made false statements in the marketplace about its own products, as well as the scope of the technology purportedly covered by its patents by repeatedly asserting that its patents cover services that are beyond the scope of what the patents actually claim.

251. Upon information and belief, the Reserve made these false assertions regarding Promontory's IND service in bad faith, and the Reserve knew or should have known that such assertions were false and objectively baseless. Upon information and belief, the Reserve has made these false assertions for the purposes of causing harm to Promontory's business and misappropriating Promontory's labor, skill, expenditures, and commercial advantages.

252. Upon information and belief, the Reserve's deposit sweep service violates certain banking laws and regulations, including, without limitation, Regulation D. The Reserve has violated these laws and regulations in order to misappropriate Promontory's labor, skill, expenditures, and commercial advantages.

253. As a result of the Reserve's conduct, Promontory has lost business and customers to the Reserve. In addition, Promontory's goodwill in the marketplace for deposit sweep services has been diminished, and the Reserve has attempted, and will continue to attempt, to divert business to the Reserve that would have gone to Promontory. Further, the Reserve's conduct has caused Promontory to incur expenses to repair business relationships, consummate

business transactions, correct misimpressions caused by the false statements, and restore the goodwill associated with the IND service.

254. The foregoing conduct of the Reserve constitutes unfair competition.

255. As a result of the foregoing, Promontory has suffered and will continue to suffer irreparable harm and loss. Unless enjoined as requested herein, the Reserve will persist in its wrongful and unlawful activities, and Promontory will thereby continue to be irreparably harmed.

256. In addition, Promontory has been and continues to be damaged by the Reserve's actions. Promontory seeks judgment in an amount to be determined at trial for compensatory damages.

## **COUNT XII**

### **Unfair Competition in Violation of Section 43(a) of the Lanham Act**

257. The allegations contained in paragraphs numbered 90 through 256 are incorporated by reference herein with the same force and effect as if set forth in full below.

258. The Reserve has falsely and misleadingly asserted in the marketplace for deposit sweep services that the IND service practices one or more of the Reserve Patents and Related Applications. In addition, the Reserve has falsely and misleadingly asserted to IND customers, users, and service providers that they may incur liability for infringement of one or more of these patents, and these applications if and when they issue, by using the IND service. The Reserve has also made false statements in the marketplace about its own products, as well as the scope of the technology purportedly covered by its patents by repeatedly asserting that its patents cover services that are beyond the scope of what the patents actually claim.

259. The Reserve made these false and misleading statements in interstate commerce and in the course of commercial advertising or promotion, and the statements have been sufficiently disseminated in the market for deposit sweep services.

260. The Reserve's false and misleading statements are material, and have actually deceived or have a tendency to deceive actual and prospective customers of Promontory's IND service.

261. Upon information and belief, the Reserve made these false and misleading assertions regarding Promontory's IND service in bad faith, and the Reserve knew or should have known that such assertions were false and objectively baseless.

262. As a result of the Reserve's conduct, Promontory's goodwill in the marketplace for deposit sweep services has been diminished, and the Reserve has attempted, and will continue to attempt, to divert business from Promontory. Further, the Reserve's conduct has caused Promontory to lose business, incur expenses to repair business relationships, consummate business transactions, correct misimpressions caused by the false statements, and restore the goodwill associated with the IND service.

263. The foregoing conduct constitutes unfair competition in violation of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

264. As a result of the foregoing, Promontory has suffered and will continue to suffer irreparable harm and loss. Unless enjoined as requested herein, the Reserve will persist in its wrongful and unlawful activities, and Promontory will thereby continue to be irreparably harmed.

265. In addition, Promontory has been or is likely to be damaged by the Reserve's actions. Promontory seeks judgment in an amount to be determined at trial for compensatory damages, and the award of attorney's fees and costs pursuant to the Lanham Act.

### **DEMAND FOR JUDGMENT**

WHEREFORE, Defendant and counterclaim plaintiff Promontory Interfinancial Network, LLC respectfully requests that this Court grant the following relief:

- a. Declare that Promontory does not infringe any valid and enforceable claim of the '231 patent;
- b. Declare that each and every claim of the '231 patent is invalid;
- c. Declare that each and every claim of the '231 patent is unenforceable
- d. Declare that Promontory does not infringe any valid and enforceable claim of the '286 patent;
- e. Declare that each and every claim of the '286 patent is invalid;
- f. Declare that each and every claim of the '286 patent is unenforceable
- g. Declare that Promontory does not infringe any valid and enforceable claim of the '551 patent;
- h. Declare that each and every claim of the '551 patent is invalid;
- i. Declare that each and every claim of the '551 patent is unenforceable;
- j. Award Promontory damages in an amount to be determined at trial to compensate it for all losses suffered as a result of the Reserve's conduct;
- k. Order the Reserve to account for and pay as damages to Promontory all profits and advantages gained from the Reserve's false and misleading assertions regarding Promontory's IND service;
- l. Award Promontory punitive damages in an amount to be proved at trial;
- m. Award Promontory equitable relief, including a preliminary and permanent injunction against the Reserve Parties from (a) enforcing or attempting to enforce the '231 patent, the '286 patent, or the '551 patent against Promontory's customers and service providers, and (b) making false or misleading assertions regarding the IND service or Promontory to actual or prospective customers or service providers of Promontory;



- n. Find this case "exceptional" within the meaning of 35 U.S.C. § 285 and award Promontory all reasonable attorney's fees, expenses, and costs;
- o. Find this case "exceptional" within the meaning of 15 U.S.C. § 1117(a) and award Promontory all reasonable attorney's fees, expenses, and costs;
- p. Award Promontory such reasonable attorney's fees, interest, and costs as otherwise provided by law; and
- q. Award such other relief as this Court deems just and proper.

Dated: June 25, 2009

Respectfully submitted,



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Counsel for Defendant and Counterclaim Plaintiff  
PROMONTORY INTERFINANCIAL NETWORK, LLC

**CERTIFICATE OF SERVICE**

I hereby certify that on this 25th day of June 2009, I will electronically file the foregoing with the Clerk of Court using the CM/ECF system. In addition, I hereby certify that copies of the foregoing have been served, by first-class mail, postage prepaid, and by email, to the following:

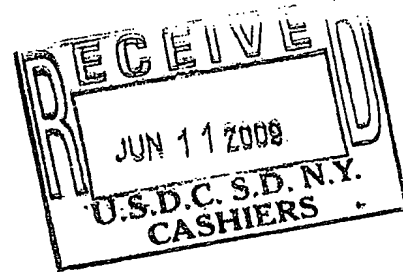
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LIDs Capital LLC, Double Rock Corporation,  
and Intrasweep LLC



UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

----- -X  
ISLAND INTELLECTUAL PROPERTY LLC,  
LIDS CAPITAL LLC, DOUBLE ROCK  
CORPORATION, and INTRASWEEP LLC,

Plaintiffs,

v.

PROMONTORY INTERFINANCIAL  
NETWORK, LLC, MBSC SECURITIES  
CORPORATION, DEUTSCHE BANK AG,  
DEUTSCHE BANK TRUST COMPANY  
AMERICAS, and TOTAL BANK SOLUTIONS,  
LLC,

Defendants.  
----- -X

Civil Action No.: 09 Civ. 2675 (VM)

**CONSOLIDATED FIRST  
AMENDED COMPLAINT**

**JURY TRIAL DEMANDED**

**CONSOLIDATED FIRST AMENDED COMPLAINT FOR PATENT INFRINGEMENT**

Pursuant to the Court's May 29, 2009, Order, Plaintiffs Island Intellectual Property LLC ("Island IP"), LIDs Capital LLC ("LIDs Capital"), Double Rock Corporation ("Double Rock"), and Intrasweep LLC ("Intrasweep") (collectively, the "Island Plaintiffs"), by their attorneys Amster, Rothstein & Ebenstein LLP, bring forth their consolidated first amended complaint.

against Defendants Promontory Interfinancial Network, LLC ("Promontory"), MBSC Securities Corporation ("MBSC"), Deutsche Bank AG ("Deutsche Germany"), Deutsche Bank Trust Company Americas ("Deutsche U.S."), and Total Bank Solutions, LLC ("TBS"). Defendants Deutsche Germany, Deutsche U.S. and TBS shall be referred to collectively as the "Deutsche Defendants."

The Island Plaintiffs allege as follows:

NATURE OF THE ACTION

1. This is an action for patent infringement arising out of:

A. Defendant Promontory's, Defendant MBSC's and the Deutsche Defendants' infringement of U.S. Patent No. 7,509,286 generally relating to computerized account management techniques used with insured deposit accounts;

B. Defendant Promontory's and the Deutsche Defendants' infringement of U.S. Patent No. 7,519,551 generally relating to computerized account management techniques used with insured deposit accounts; and

C. the Deutsche Defendants' infringement of U.S. Patent No. 7,536,350 generally relating to computerized account management techniques used with insured deposit accounts offered by multiple banks.

2. Specifically, this Consolidated First Amended Complaint asserts claims against:

A. Defendant Promontory, Defendant MBSC and the Deutsche Defendants arising from their infringement of at least Claim 1 of U.S. Patent No. 7,509,286, issued on March 24, 2009, and entitled "Systems and Methods for Money Fund Banking with Flexible Interest Allocation" ("the '286 Patent");

B. Defendant Promontory arising from its infringement of at least Claim 18 of U.S. Patent No. 7,519,551 issued on April 13, 2009, and entitled "Systems and Method For

Administering Return Sweep Accounts” (“the ‘551 Patent”);

C. the Deutsche Defendants arising from their infringement of at least Claim 1 of the ‘551 Patent; and

D. the Deutsche Defendants arising from their infringement of at least Claim 12 of U.S. Patent No. 7,536,350, issued on May 19, 2009, and entitled “Systems and Methods for Providing Enhanced Account Management Services for Multiple Banks” (“the ‘350 Patent”).

3. True and correct copies of the ‘286 Patent, ‘551 Patent, and ‘350 Patent are attached hereto as Exhibits A, B, and C, respectively.

#### THE PARTIES

4. Island IP is a limited liability company, organized and existing under the laws of the State of Delaware. Island IP’s principal place of business is located at 1250 Broadway, Thirty-Second Floor, New York, NY 10001, within this District.

5. LIDs Capital is a limited liability company, organized and existing under the laws of the State of Delaware. LIDs Capital’s principal place of business is located at 1250 Broadway, Thirty-Second Floor, New York, NY 10001, within this District.

6. Double Rock is a corporation organized and existing under the laws of the State of New Jersey. Double Rock’s principal place of business is located at 1250 Broadway, Thirty-Second Floor, New York, NY 10001, within this District.

7. Intrasweep is a limited liability company, organized and existing under the laws of the State of Delaware. Intrasweep’s principal place of business is located at 1250 Broadway, Thirty-Second Floor, New York, NY 10001, within this District.

8. Upon information and belief, Defendant Promontory is a limited liability company organized and existing under the laws of the State of Delaware with a place of business at 1515 North Courthouse Road, Suite 800, Arlington, VA 22201. Defendant Promontory also

maintains an office at 280 Park Avenue, 33rd Floor West, New York, NY 10017, within this District.

9. Upon information and belief, Defendant MBSC is a corporation organized and existing under the laws of the State of New York, with a place of business at 200 Park Avenue, New York, NY 10166, within this district.

10. Upon information and belief, Defendant Deutsche Germany is a corporation organized and existing under the laws of the Federal Republic of Germany. Deutsche Germany's regional head office in the United States is located at 60 Wall Street, New York, New York, 10005, within this District.

11. Upon information and belief, Defendant Deutsche U.S. is a corporation organized and existing under the laws of the State of New York. Deutsche U.S.'s principal place of business is located at 60 Wall Street, New York, New York 10005, within this District.

12. Upon information and belief, Defendant TBS is a corporation organized and existing under the laws of the State of New Jersey. TBS's principal place of business is located at Three University Plaza, Suite 320, Hackensack, NJ 07601.

#### JURISDICTION AND VENUE

13. This is a civil action for patent infringement arising under the United States patent statutes, 35 U.S.C. § 1 *et seq.*

14. This Court has jurisdiction over the subject matter of this action under 28 U.S.C. §§ 1331 and 1338(a).

15. Upon information and belief, Defendant Promontory is subject to this Court's personal jurisdiction because it does substantial business in this judicial district, including: (i) offering and operating its banking services within this State and this District; (ii) maintaining an office within this State and this District; and (iii) operating its infringing insured deposit program

within this State and in this District. Defendant Promontory is qualified to do business in the State of New York.

16. Upon information and belief, Defendant MBSC is subject to this Court's personal jurisdiction because it, including by and through its division Dreyfus Investments, does substantial business in this judicial district, including: (i) offering and operating its banking services within this State and this District; (ii) maintaining an office within this State and this District; and (iii) operating its infringing insured deposit program within this State and in this District. In addition, as a New York Corporation, Defendant MBSC has designated an agent for service of process in the State of New York.

17. Upon information and belief, Defendant Deutsche Germany is subject to this Court's personal jurisdiction because it does substantial business in this judicial district, including: (i) offering and operating its banking services within this State and this District; (ii) maintaining an office within this State and this District; and (iii) operating its infringing insured deposit program within this State and in this District. In addition, Deutsche Germany has designated Deutsche Bank Americas, located at 60 Wall Street, New York, NY 10005, as its agent in the State of New York.

18. Upon information and belief, Defendant Deutsche U.S. is subject to this Court's personal jurisdiction because it has done substantial business in this judicial district, including: (i) offering and operating its banking services within this State and this District; (ii) maintaining an office within this State and this District; and (iii) acting as the intermediary for Deutsche Germany's infringing insured deposit program within this State and in this District. In addition, as a New York Corporation, Defendant Deutsche U.S. has designated an agent for service of process in the State of New York.

19. Upon information and belief, Defendant TBS is subject to this Court's personal jurisdiction because it has done substantial business in this judicial district, including offering and operating computer and record keeping services for at least Deutsche U.S.'s infringing insured deposit program within this State and in this District.

20. Venue is proper in this judicial district under 28 U.S.C. §§ 1391(b)-(c) and 1400(b).

#### FACTUAL BACKGROUND

21. The Island Plaintiffs are industry leaders in providing cash management and monetary regulation systems.

22. The principals of Double Rock developed an innovative product known as "insured deposits," which provides financial service institutions with the ability to offer customers FDIC-insured, interest bearing demand accounts, with unlimited checking.

23. One type of insured deposits product, developed by Double Rock and now offered through LIDs Capital, is an insured deposits program for broker dealers and clearing agents that permits brokerage accounts to have expanded FDIC insurance protection.

24. One type of insured deposits product, developed by Double Rock and now offered through Intrasweep, is an "on balance sheet" cash sweep solution for banks that helps banks grow core deposits.

25. Since its first introduction, the principals of Double Rock developed improvements to the insured deposits product.

26. Various improvements developed by the principals of Double Rock for the insured deposits product relate to the ability to provide financial service institutions with the ability to offer different interest rates to different customers participating in the program, known as "tiered interest rates."



27. Various improvements developed by the principals of Double Rock for the insured deposits product relate to the ability to provide financial service institutions with the ability to maintain more assets in a program within their own financial services infrastructure.

28. Various improvements developed by the principals of Double Rock for the insured deposits product offered by banks relate to providing banks the ability to join a network where they can obtain reciprocity for funds put into the network, thus providing the banks' clients enhanced FDIC insurance protection while maintaining a greater amount of funds on the banks' balance sheets.

#### THE PATENTS-IN-SUIT

29. The '286 Patent claims a novel method of managing client funds by providing financial institutions the ability to provide client accounts with increased FDIC insurance and provide interest using tiered interest rates. The patented method also manages the accounts by aggregating the client accounts at each bank participating within the program.

30. The '551 Patent claims a novel method of managing client funds by providing financial institutions the ability to provide client accounts with increased FDIC insurance. The patented method also manages the accounts by aggregating the client accounts at each bank participating within the program where one of the banking participants in the program is the same as or affiliated with the financial institution.

31. The '350 Patent claims a novel method of managing client funds by providing banks the ability to provide client accounts with increased FDIC insurance, yet maintain a corresponding amount of assets to the excess deposits on the banks' books.

32. Island IP, a wholly-owned subsidiary of Double Rock, is the owner of all rights, title and interest in the '286 Patent, the '551 Patent, and the '350 Patent.

33. LIDs Capital, also a wholly-owned subsidiary of Double Rock, is the exclusive licensee of Island IP for the '286 Patent, the '551 Patent, and the '350 Patent with respect to providing cash management services for broker dealers and asset managers.

34. Intrasweep, also a wholly-owned subsidiary of Double Rock, is the exclusive licensee of Island IP for the '286 Patent, the '551 Patent and the '350 Patent with respect to, *inter alia*, providing cash management services for banks in connection with money market deposit accounts and demand deposit accounts that facilitate the transfer of funds between money market deposit accounts and demand deposit accounts.

35. Double Rock is a sublicensee of Intrasweep and LIDs Capital for the '286 Patent, the '551 Patent, and the '350 Patent, with respect to the same fields of use as the exclusive licenses of Intrasweep and LIDs Capital.

#### THE PROMONTORY AND DREYFUS INFRINGING PRODUCTS

36. Upon information and belief, Defendant Promontory operates, within the United States, a money management program designated as the "Insured Network Deposits" or "IND" service, which allows broker-dealers to offer a multi-bank, FDIC-insured deposit sweep product ("the IND Service"). The IND Service includes services designated as "IND for broker-dealers" and "IND for bankers."

37. Upon information and belief, Dreyfus Investments, a division of Defendant MBSC, within the United States, offers for sale the "Dreyfus Insured Deposit Program," a financial product using the IND Service of Defendant Promontory.

38. Upon information and belief, the computer systems used by Defendant Promontory to implement the IND Service use the methods claimed in at least Claim 1 of the '286 Patent.

39. Upon information and belief, the computer systems used by Defendant MBSC to implement the Dreyfus Insured Deposit Program, a financial product using the IND Service of Defendant Promontory, use the methods claimed in at least Claim 1 of the '286 Patent.

40. Defendant Promontory and Defendant MBSC do not have a license or other authorization from any of the Island Plaintiffs to practice the claims set forth in the '286 Patent.

41. Upon information and belief, the computer systems used by Defendant Promontory with the IND Service use the methods claimed in at least Claim 18 of the '551 Patent.

42. Defendant Promontory does not have a license or other authorization from any of the Island Plaintiffs to practice the claims set forth in the '551 Patent.

43. Defendant Promontory and Defendant MBSC compete directly with the broker dealer insured deposit products offered by LIDs Capital and Double Rock as a sublicensee of LIDs Capital.

#### THE DEUTSCHE DEFENDANTS INFRINGING PRODUCTS

44. Upon information and belief, the Deutsche Defendants operate, within the United States, a money management program designated as the "Deutsche Bank Insured Deposit Program" ("Deutsche IDP").

45. Upon information and belief, TBS is a financial data processing company that offers its own insured deposit program which provides the computer and record keeping services for at least the Deutsche IDP.

46. Upon information and belief, the computer systems used with the Deutsche IDP use the methods claimed in at least Claim 1 of the '286 Patent.

47. The Deutsche Defendants do not have a license or other authorization from any of the Island Plaintiffs to practice the claims set forth in the '286 Patent.

48. Upon information and belief, the computer systems used with the Deutsche IDP use the methods claimed in at least Claim 1 of the '551 Patent.

49. The Deutsche Defendants do not have a license or other authorization from any of the Island Plaintiffs to practice the claims set forth in the '551 Patent.

50. Upon information and belief, the computer systems used with the Deutsche IDP use the methods claimed in at least Claim 12 of the '350 Patent.

51. The Deutsche Defendants do not have a license or other authorization from any of the Island Plaintiffs to practice the claims set forth in the '350 Patent.

52. The Deutsche IDP competes directly with the products offered by Intraseep, LIDs Capital, and Double Rock as a sublicensee of both Intraseep and LIDs Capital.

COUNT ONE

(By Plaintiffs Island IP, LIDs Capital and Double Rock for Patent Infringement by the Defendant Promontory and Defendant MBSC of the '286 Patent)

53. Plaintiffs Island IP, LIDs Capital and Double Rock incorporate by reference as if fully set forth herein the averments contained within Paragraphs 1-52 above.

54. Defendant Promontory and Defendant MBSC have infringed at least Claim 1 of the '286 Patent, in violation of Title 35, United States Code section 271 through one or more of the following: (1) the manufacture, use, sale, and/or offer for sale of the invention claimed in the '286 Patent; (2) the active inducement of another to infringe the '286 Patent; and/or (3) contributing to the infringement by another of the '286 Patent.

55. Unless enjoined by this Court, Defendant Promontory and Defendant MBSC will continue their acts of infringement causing substantial and irreparable harm to Plaintiffs Island IP, LIDs Capital and Double Rock.

56. Plaintiffs Island IP, LIDs Capital and Double Rock are suffering and will continue

to suffer damages as the direct and proximate result of Defendant Promontory's and Defendant MBSC's infringement of the '286 Patent.

57. Plaintiffs Island IP, LIDs Capital and Double Rock are suffering and will continue to suffer irreparable injury as the direct and proximate result of Defendant Promontory's and Defendant MBSC's infringement of the '286 Patent.

COUNT TWO

(By Plaintiffs Island IP, LIDs Capital and Double Rock for Patent Infringement by the Deutsche Defendants of the '286 Patent)

58. Plaintiffs Island IP, LIDs Capital and Double Rock incorporate by reference as if fully set forth herein the averments contained within Paragraphs 1-52 above.

59. The Deutsche Defendants have infringed at least Claim 1 of the '286 Patent, in violation of Title 35, United States Code section 271 through one or more of the following: (1) the manufacture, use, sale, and/or offer for sale of the invention claimed in the '286 Patent; (2) the active inducement of another to infringe the '286 Patent; and/or (3) contributing to the infringement by another of the '286 Patent.

60. Unless enjoined by this Court, the Deutsche Defendants will continue their acts of infringement causing substantial and irreparable harm to Plaintiffs Island IP, LIDs Capital and Double Rock.

61. Plaintiffs Island IP, LIDs Capital and Double Rock are suffering and will continue to suffer damages as the direct and proximate result of the Deutsche Defendants' infringement of the '286 Patent.

62. Plaintiffs Island IP, LIDs Capital and Double Rock are suffering and will continue to suffer irreparable injury as the direct and proximate result of the Deutsche Defendants' infringement of the '286 Patent.

COUNT THREE

(By Plaintiffs Island IP, LIDs Capital and Double Rock for Patent Infringement by Defendant Promontory of the '551 Patent)

63. Plaintiffs Island IP, LIDs Capital and Double Rock incorporate by reference as if fully set forth herein the averments contained within Paragraphs 1-52 above.

64. Defendant Promontory has infringed at least Claim 18 of the '551 Patent, in violation of Title 35, United States Code section 271 through one or more of the following: (1) the manufacture, use, sale, and/or offer for sale of the invention claimed in the '551 Patent; (2) the active inducement of another to infringe the '551 Patent; and/or (3) contributing to the infringement by another of the '551 Patent.

65. Defendant Promontory has been on notice of a published Application which matured into the '551 Patent since at least as early as on or about May 24, 2006.

66. Unless enjoined by this Court, Defendant Promontory will continue its acts of infringement causing substantial and irreparable harm to Plaintiffs Island IP, LIDs Capital and Double Rock.

67. Plaintiffs Island IP, LIDs Capital and Double Rock are suffering and will continue to suffer damages as the direct and proximate result of Defendant Promontory's infringement of the '551 Patent.

68. Plaintiffs Island IP, LIDs Capital and Double Rock are suffering and will continue to suffer irreparable injury as the direct and proximate result of Defendant Promontory's infringement of the '551 Patent.

COUNT FOUR

(By Plaintiffs Island IP, Intrasweep and Double Rock for Patent Infringement by the Deutsche Defendants of the '551 Patent)

69. Plaintiffs Island IP, Intrasweep and Double Rock incorporate by reference as if

fully set forth herein the averments contained within Paragraphs 1-52 above.

70. The Deutsche Defendants have infringed at least Claim 1 of the '551 Patent, in violation of Title 35, United States Code section 271 through one or more of the following: (1) the manufacture, use, sale, and/or offer for sale of the invention claimed in the '551 Patent; (2) the active inducement of another to infringe the '551 Patent; and/or (3) contributing to the infringement by another of the '551 Patent.

71. Unless enjoined by this Court, the Deutsche Defendants will continue their acts of infringement causing substantial and irreparable harm to Plaintiffs Island IP, Intrasweep and Double Rock.

72. The Deutsche Defendants have been on notice of a published Application which matured into the '551 Patent since at least as early as on or about October 18, 2005.

73. Plaintiffs Island IP, Intrasweep and Double Rock are suffering and will continue to suffer damages as the direct and proximate result of the Deutsche Defendants' infringement of the '551 Patent.

74. Plaintiffs Island IP, Intrasweep and Double Rock are suffering and will continue to suffer irreparable injury as the direct and proximate result of the Deutsche Defendants' infringement of the '551 Patent.

#### COUNT FIVE

#### (By Plaintiffs Island IP, Intrasweep and Double Rock for Patent Infringement by the Deutsche Defendants of the '350 Patent)

75. Plaintiffs Island IP, Intrasweep and Double Rock incorporate by reference as if fully set forth herein the averments contained within Paragraphs 1-52 above.

76. The Deutsche Defendants have infringed at least Claim 12 of the '350 Patent, in violation of Title 35, United States Code section 271 through one or more of the following: (1)

the manufacture, use, sale, and/or offer for sale of the invention claimed in the '350 Patent; (2) the active inducement of another to infringe the '350 Patent; and/or (3) contributing to the infringement by another of the '350 Patent.

77. Unless enjoined by this Court, the Deutsche Defendants will continue their acts of infringement causing substantial and irreparable harm to Plaintiffs Island IP, Intrasweep and Double Rock.

78. Plaintiffs Island IP, Intrasweep and Double Rock are suffering and will continue to suffer damages as the direct and proximate result of the Deutsche Defendants' infringement of the '350 Patent.

79. Plaintiffs Island IP, Intrasweep and Double Rock are suffering and will continue to suffer irreparable injury as the direct and proximate result of the Deutsche Defendants' infringement of the '350 Patent.

PRAYER FOR RELIEF

WHEREFORE, the Island Plaintiffs request judgment against Defendant Promontory, Defendant MBSC and the Deutsche Defendants as follows:

I. WITH RESPECT TO THE '286 PATENT

A. That Defendant Promontory, Defendant MBSC and the Deutsche Defendants be held liable for infringement of at least Claim 1 of the '286 Patent.

B. That a permanent injunction issue against Defendant Promontory, Defendant MBSC and the Deutsche Defendants, their officers, agents, servants, employees, attorneys, parent and subsidiary corporations, assigns and successors in interest, and those persons in active concert or participation with them, enjoining them from continued acts of infringement of the '286 Patent.



C. That the Court Order Defendant Promontory, Defendant MBSC and the Deutsche Defendants to pay to Plaintiffs Island IP, LIDs Capital and Double Rock damages adequate to compensate Plaintiffs Island IP, LIDs Capital and Double Rock for the acts of infringement of Defendant Promontory, Defendant MBSC and the Deutsche Defendants together with interest and costs, pursuant to 35 U.S.C. § 284.

D. That the Court award such other and further relief as the Court deems just and proper.

II. WITH RESPECT TO THE '551 PATENT

A. That Defendant Promontory be held liable for infringement of at least Claims 18 of the '551 Patent.

B. That the Deutsche Defendants be held liable for infringement of at least Claim 1 of the '551 Patent.

C. That a permanent injunction issue against Defendant Promontory and the Deutsche Defendants, their officers, agents, servants, employees, attorneys, parent and subsidiary corporations, assigns and successors in interest, and those persons in active concert or participation with them, enjoining them from continued acts of infringement of the '551 Patent.

D. That the Court Order Defendant Promontory and the Deutsche Defendants to pay to the Island Plaintiffs damages adequate to compensate the Island Plaintiffs for the acts of infringement of Defendant Promontory and the Deutsche Defendants together with interest and costs, pursuant to 35 U.S.C. § 284.

E. That the Court award such other and further relief as the Court deems just and proper.

III. WITH RESPECT TO THE '350 PATENT

A. That the Deutsche Defendants be held liable for infringement of at least Claim 12 of the '350 Patent.

B. That a permanent injunction issue against the Deutsche Defendants, their officers, agents, servants, employees, attorneys, parent and subsidiary corporations, assigns and successors in interest, and those persons in active concert or participation with them, enjoining them from continued acts of infringement of the '350 Patent.

C. That the Court Order the Deutsche Defendants to pay to Plaintiffs Island IP, Intrasweep and Double Rock damages adequate to compensate Plaintiffs Island IP, Intrasweep and Double Rock for the acts of infringement of the Deutsche Defendants together with interest and costs, pursuant to 35 U.S.C. § 284.

D. That the Court award such other and further relief as the Court deems just and proper.

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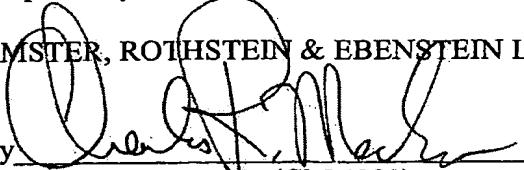
DEMAND FOR JURY TRIAL

80. The Island Plaintiffs hereby request a trial by jury.

Respectfully submitted,

AMSTER, ROTHSTEIN & EBENSTEIN LLP

By

  
Charles R. Macedo (CM 4980)

Dated: New York, New York  
June 11, 2009

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Attorneys for Plaintiffs  
Island Intellectual Property LLC  
LIDs Capital LLC, Double Rock Corporation, and  
Intrasweep LLC

# EXHIBIT A

(12) **United States Patent**  
**Bent et al.**

(10) **Patent No.:** **US 7,509,286 B1**  
(45) **Date of Patent:** **Mar. 24, 2009**

(54) **SYSTEMS AND METHODS FOR MONEY  
FUND BANKING WITH FLEXIBLE  
INTEREST ALLOCATION**

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(Continued)

(75) Inventors: **Bruce Bent**, New York, NY (US); **Bruce Bent, II**, New York, NY (US)

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(73) Assignee: **Reserve Management Corporation**,  
New York, NY (US)

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(Continued)

(\*) Notice: Subject to any disclaimer, the term of this patent is extended or adjusted under 35 U.S.C. 154(b) by 1368 days.

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(Continued)

(21) Appl. No.: **10/411,650**

(22) Filed: **Apr. 11, 2003**

Primary Examiner—Jagdish N Patel

(74) Attorney, Agent, or Firm—Foley & Lardner LLP

#### Related U.S. Application Data

(63) Continuation-in-part of application No. 10/382,946, filed on Mar. 6, 2003, and a continuation-in-part of application No. 10/071,053, filed on Feb. 8, 2002, and a continuation-in-part of application No. 09/677,535, filed on Oct. 2, 2000, which is a continuation-in-part of application No. 09/176,340, filed on Oct. 21, 1998, now Pat. No. 6,374,231.

(60) Provisional application No. 60/372,374, filed on Apr. 12, 2002.

(51) Int. Cl. **G06Q 40/00** (2006.01)

(52) U.S. Cl. **705/39; 705/35; 705/38**

(58) Field of Classification Search **705/39, 705/35**

See application file for complete search history.

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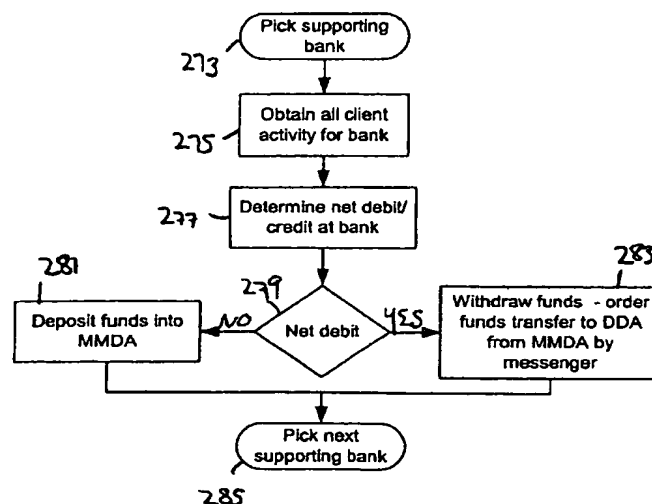
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(57) **ABSTRACT**

This invention provides system and methods for managing accounts of clients at customer financial entities so that deposits of up to \$100,000 or greater are insured, so that interest income earned on a portion of all of the account balances may be flexibly allocated according to customer instructions, and so that withdrawals are not limited. These objects are satisfied by holding client funds at interest-earning money market deposit accounts at one or more banks of savings institutions. More particularly, this invention provides methods for receiving client transaction information, determining a net transfer of funds into or out of each client account from transaction information, causing transfer of funds from the insured, interest-bearing deposit accounts to match the net transfer of funds into or out of each client account, and allocating interest earned by the deposit accounts to clients according to customer instructions. This invention also provides systems and software products implementing these methods.

**18 Claims, 5 Drawing Sheets**



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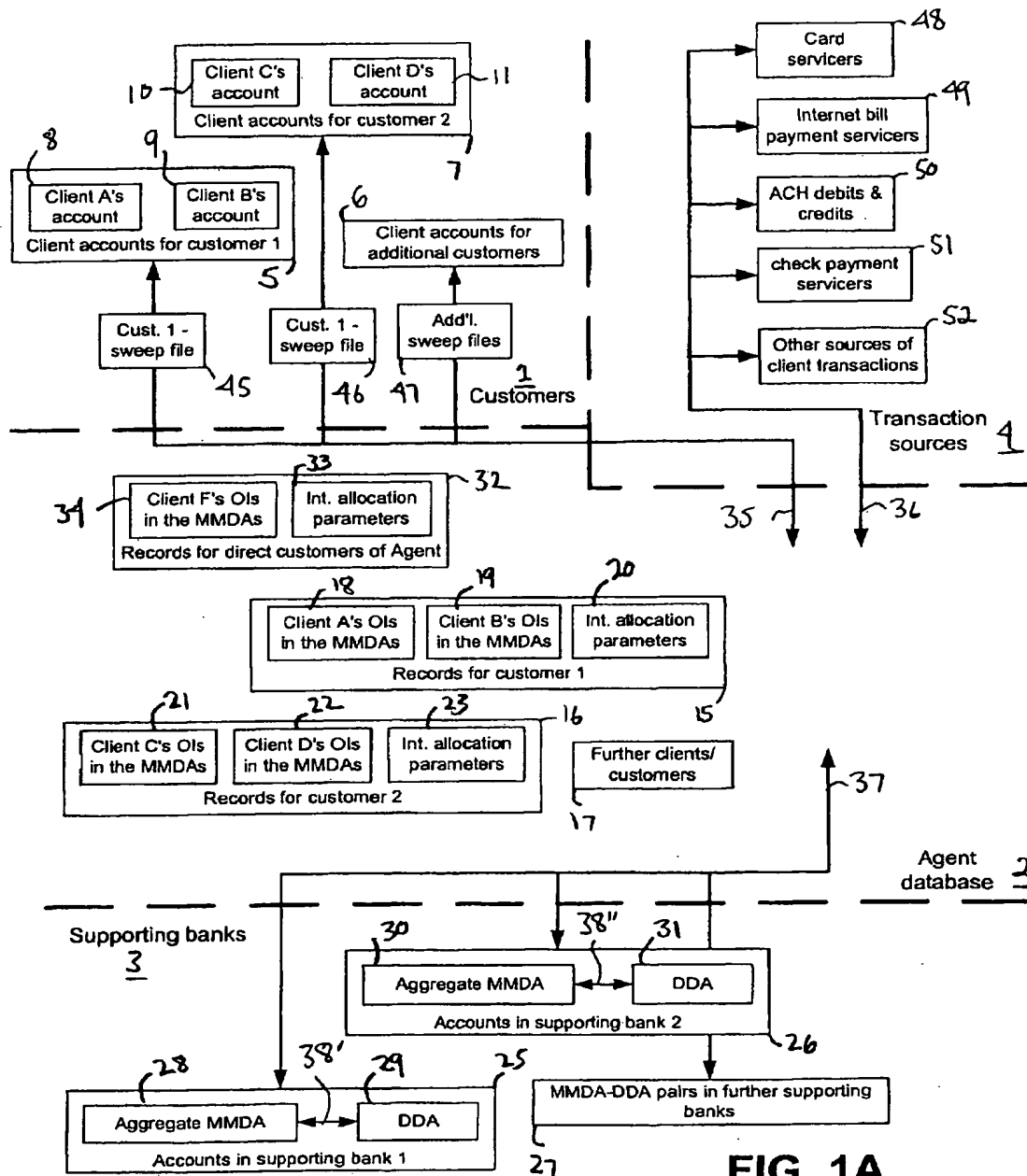


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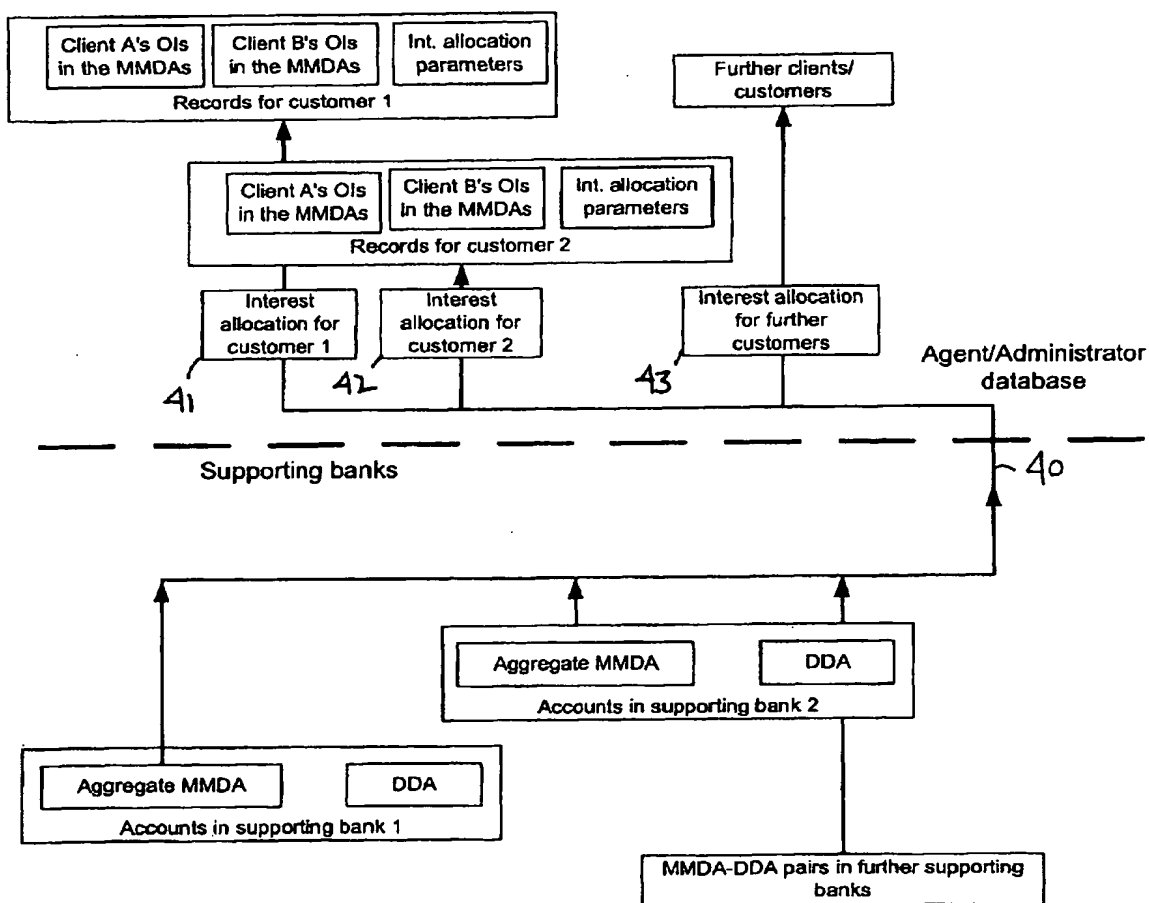
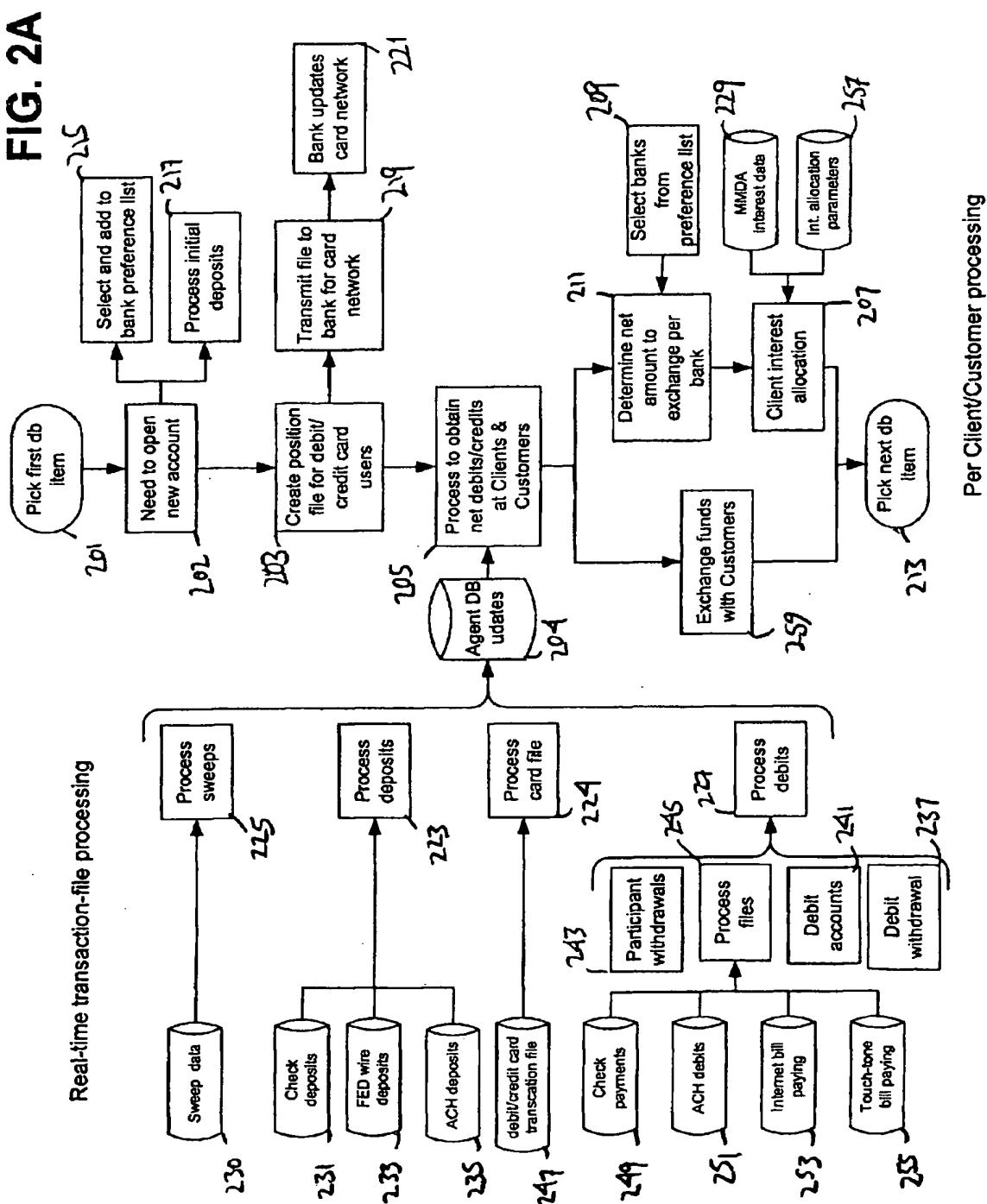


FIG. 1B

**FIG. 2A**

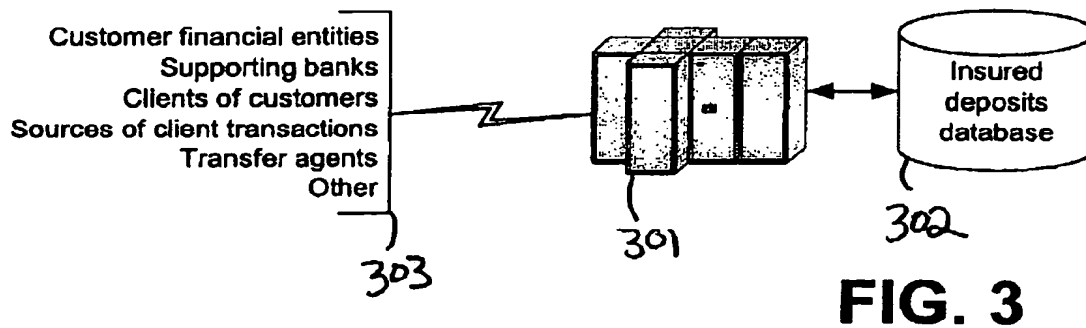
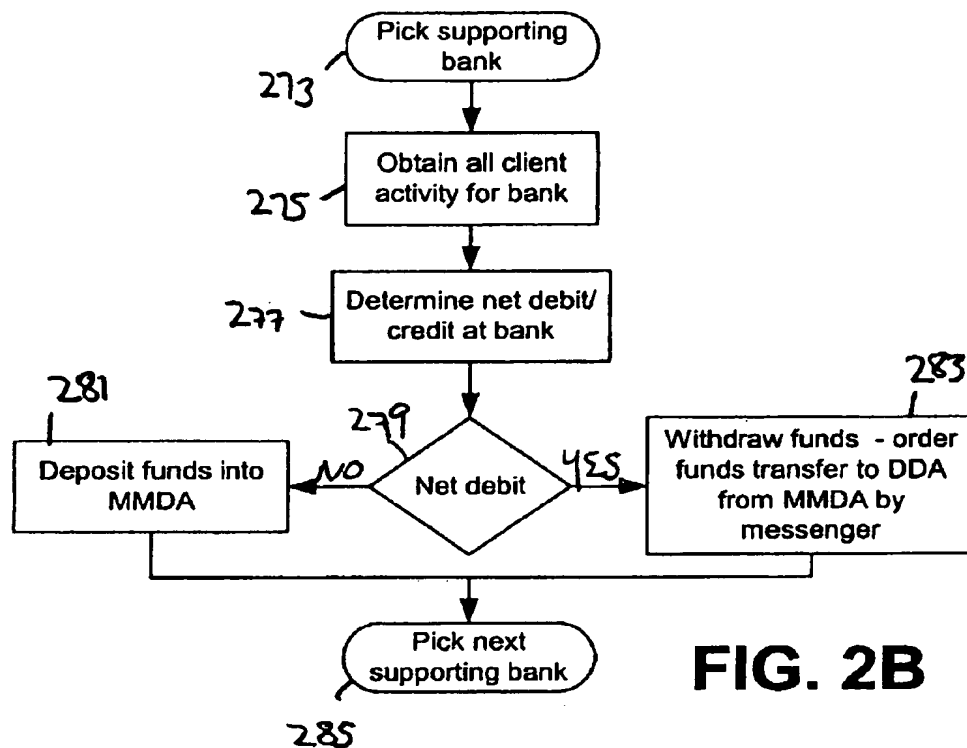


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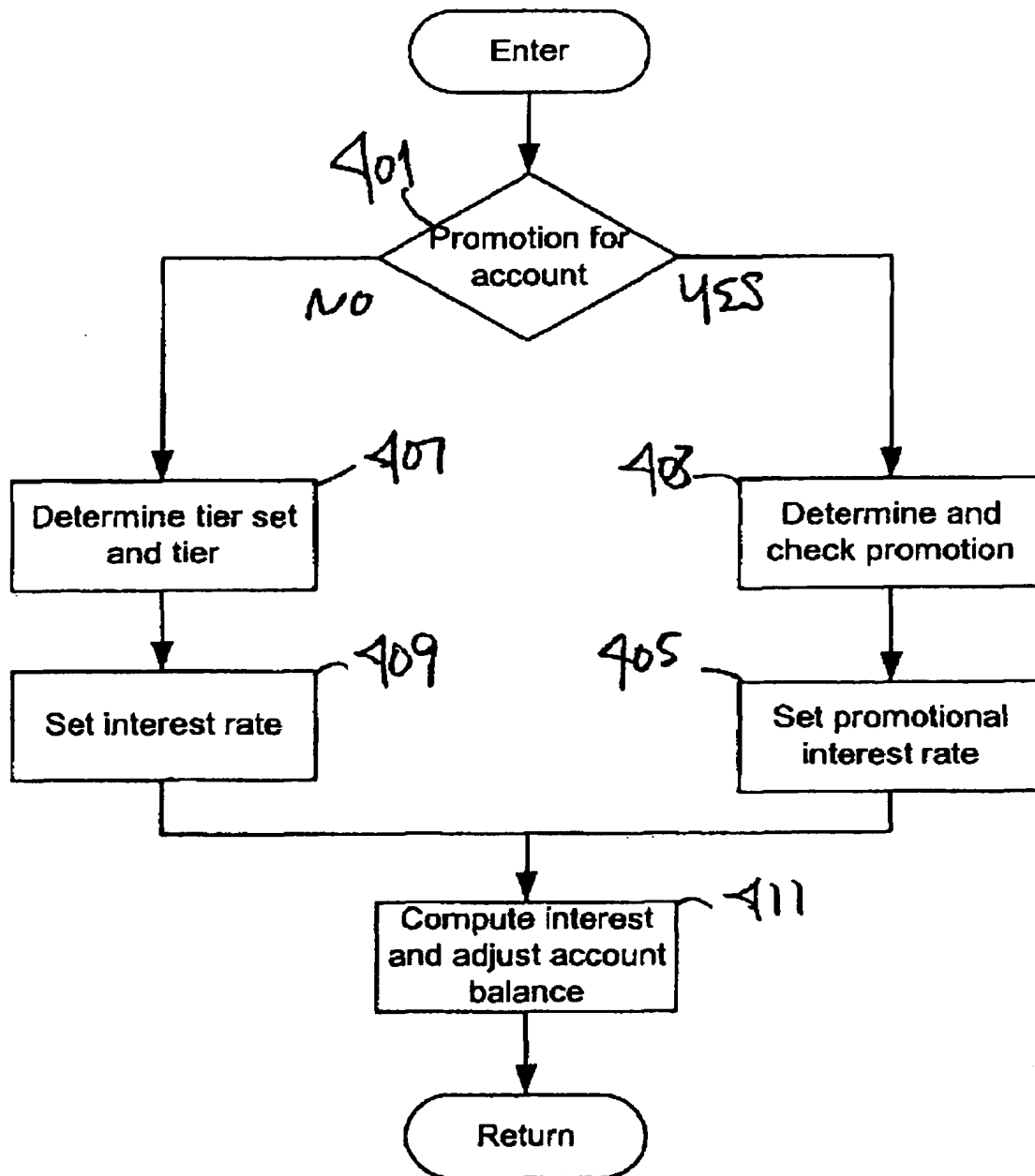


FIG. 4

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## SYSTEMS AND METHODS FOR MONEY FUND BANKING WITH FLEXIBLE INTEREST ALLOCATION

### 1. RELATED APPLICATIONS

This application is a continuation-in-part of patent applications: Ser. No. 09/677,535, filed on Oct. 2, 2000, Ser. No. 10/071,053, filed Feb. 8, 2002, and Ser. No. 10/382,946 filed Mar. 6, 2003 entitled SYSTEMS AND METHODS FOR PROVIDING ENHANCED ACCOUNT MANAGEMENT SERVICE FOR MULTIPLE BANKS; all these applications are continuations-in-part of patent application Ser. No. 09/176,340, filed on Oct. 21, 1998, now U.S. Pat. No. 6,374, 231. This application claims the priority of Ser. No. 09/677, 535, filed on Oct. 2, 2000, Ser. No. 10/071,053, filed Feb. 8, 2002, Ser. No. 10/382,946 filed Mar. 6, 2003 and provisional patent application 60/372,374, filed Apr. 12, 2002.

### 2. BACKGROUND OF THE INVENTION

#### 2.1. Field of the Invention

It would be desirable if depositors and investors could obtain FDIC insured, interest-bearing accounts with interest rates that can be flexibly assigned, with an unlimited number of fund transfers per month, and with insurance that may exceed \$100,000. However, account offerings in the United States ("US") are limited by statutes generally codified as Title 12 of the United States Code ("U.S.C.") (Banks and Banking). These statutes and accompanying regulatory scheme limit investors and depositors seeking investments and deposits having a lower risk profile to a rather limited selection of choices, all of which suffer inhibiting constraints.

#### 2.2. Background Art

More specifically, 12 CFR 329.2 states that "no bank shall, directly or indirectly, by any device whatsoever, pay interest on any demand deposit." A "deposit" is any money placed into a checking account, savings account, Certificate of Deposit (CD), or the like. In a "demand" account, the owner can make an unlimited number of funds transfers to another account (having the same or a different owner), or to a third party, typically by bank drafts, checks, credit cards, and debit cards. In essence, an account in which a depositor has the ability to make at least six transfers will be deemed a demand account and no interest will be payable on the funds therein (unless the funds are held in a NOW account under 18 U.S.C.1832(a)). Therefore, owners of demand accounts are denied interest on their funds.

The rules governing insurance of deposits in institutions insured by the BIF and the SAIF are the same. In particular, according to 12 U.S.C. § 1821(a), the FDIC limits insurance coverage provided to the owners(s) of funds deposited in each insured institution to \$100,000, and bases insurance coverage on the concept of ownership rights and capacities, that is, funds held in different ownership categories are insured separately from each other; and funds owned by the same entity but held in different accounts at the same financial entity are subsumed under the same insurance coverage.

One or more of these objects are satisfied by systems and methods structured according to a novel and creative combination of certain of financial-entity and bank regulations first noticed and assembled by the inventors. First, although accounts that require withdrawal notice are not demand accounts and therefore may earn interest, certain accounts not requiring withdrawal notice may still be deemed "savings accounts" and capable of earning interest. For example, an account that does not require withdrawal notice (but may so

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require at any time) is nevertheless a savings account if no more than six transfers and withdrawals are made monthly. In particular, 12 C.F.R. § 204.2(d)(1) (underlining added) states:

Therefore, the inventors have conceived and implemented arrangements whereby a single corporation, partnership, or other legal person (generally, "entity") acts as an agent of numerous individuals or other ownership interests (for example, joint ownership, ownership in trust (such as individual retirement accounts, and other legally established savings mechanisms), and so forth) to manage the funds of each ownership interest in the aggregate MMDAs in one or more Supporting financial entities so that each ownership interest's funds earn interest while remaining FDIC insured with insurance up to \$100,000 per each participating Supporting banking financial entity. Further, each Supporting financial entity, such as a bank or a saving institution, holds a single MMDA that is paired with a single corresponding DDA in the same name so that each ownership interest's use of managed funds is not limited.

To accomplish these and other objectives, this invention provides systems and methods for managing a plurality of Clients of one or more Customer financial entities by administering at one or more Supporting financial entities, such as banking or savings institutions, an FDIC-insured MMDA (money market deposit account) maintained at each participating Supporting financial entity in which are held some or all of the funds in the managed Client accounts, and for managing an Agent database recording the financial information describing the managed Client balances, Client information for each Client's account, Customer information for each Customer financial entity, financial information describing each aggregate MMDA held at a Supporting financial entity, and information for each Supporting financial entity. Where Client funds are held across more than one MMDA, the funds may be insured to more than \$100,000. For example, if they are held in two (or three, or four) MMDAs (each MMDA held in a different Supporting financial entity), then insurance may be \$200,000 (or \$300,000, or \$400,000).

In certain embodiments, where the Agent has a single MMDA-DDA pair in which all Agent-managed Client funds are held, Client liability insurance is limited to \$100,000. In other embodiments, where it is preferable to provide Clients with more than \$100,000 of insurance, the Agent has two or more MMDA-DDA pairs, each pair in a different Supporting financial entity, and it manages Client funds so that each Client's ownership interest at any one Supporting financial entity never exceeds \$100,000. For example, when a Client's balance exceeds \$90,000 (or some other operational threshold not greater than \$100,000) in the aggregate MMDA at a particular Supporting financial entity, excess funds are automatically moved to a MMDA at a second Supporting financial entity. Although, Client funds may be from time-to-time be deposited at several Supporting financial entity, the accounting for these funds is preferably consolidated so that the multiple MMDAs are transparent to the investor. All Client funds exchanges and transactions may then post to a single Client account on the Agent database although the balances in this account may spread across multiple MMDAs held at multiple Supporting financial entities (represented as sub-accounts of the single Client account).

In a preferred embodiment, the functional relationship determining interest rate (for a particular Customer financial entity) is implemented largely with one or more interest rate tables. An interest rate table is known herein as a "tier set," which has one or more rows, known as "tiers." Each tier, or row, specifies at least a range for a selected, primary account characteristic along with the interest rate to be assigned to

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accounts when their selected characteristic is in the specified range. For example, where the selected characteristic is account balance, a tier set preferably includes tiers such that whatever its balance an account is assigned some interest rate (almost always, the higher the balance, the higher the assigned interest rate). One of skill in the art will appreciate that a selected functional relationship of account characteristics to interest rate may be implemented by a many tier sets. Because the relation between interest rate determination and tier sets is not unique, what is fundamental is the functional relation determining interest rate; a particular tier set is simply one expression of the fundamental functional relation specified by the Customer financial entity.

In one aspect of this embodiment, the Agent provides interest rates that vary as the amount of managed balances vary, generally the higher the balance, the higher the interest rate. The Agent database stores sets of tables referred to as "tier sets," each table returns interest rates (or a relative interest rate) as a function of the managed balance in a Client's account. During the process of interest allocation for a Client account, the Agent retrieves the tier set for a particular Client account, and applies the correct tier to the managed account balance to return an interest rate according to which the interest income is credited to the Client's account balance. The tier set for a particular Client account may be chosen according to information and flags stored as part of the Client information on the Agent database. The tier sets, tiers, and information for selecting tier sets and tiers may be provided by the Customer financial entity.

In a concrete preferred embodiment, a Customer financial entity, such as a broker/dealer, an investment advisor, a credit union, or other financial entity, may wish to pay higher interest rates to accounts with larger balances because they are usually more profitable than accounts with smaller balances, and may also wish to run interest rate promotions from time-to-time. Accordingly, this Customer financial entity may specify a tier set with a base tier set applicable to all its Clients in the absence of further indication in the account. Typically, a base tier set leads to the same interest rate for all account balances (for example, by having a single tier). The tier set would also have a standard tier set (or more than one) leading to increasing interest rates with increasing balances. Finally, there would be one or more promotional tier sets that determines the promotional interest rates. The promotion tier set may also include time information. For example, all Client accounts opened from April 1<sup>st</sup> through June 30<sup>th</sup> earn 5%, but after June 30<sup>th</sup> all accounts in the tier group will default to a tier set that determines interest rates based on the balance in the account. Alternatively, the promotional tier set may specify that each account has an individual promotional period. For example, an account may earn a promotional rate for the first 60 days after it is opened at the Customer financial entity. On the 61<sup>st</sup> day, the account will default to a standard.

As illustrated, the Agent is generally central in these information and funds exchanges, receiving and processing transaction data and then causing necessary funds transfers.

The Agent database also preferably additionally stores records describing and representing the Customer financial entities, such as records 15 and 16. These stored records represent at least Customer financial entity identification and such other information as the Agent needs to manage the Customer financial entity's Clients, including importantly parameters provided by the Customer financial entity to guide interest allocation. Thus the records describing Customer financial entity 1, records 15, include its interest allocation parameters and instructions 20, and those for Customer financial entity 20, records 16, include its interest allocation

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instructions 23. Where interest is allocated according to tier sets and tiers, the interest allocation records described the Customer-financial-entity-defined balance balance-tiers and associated interest rate, both of which may be changed by the Customer financial entity from time-to-time. Although FIG. 1A illustrates all the records for the individual Customer financial entities being grouped together, actual implementation of the Agent database may organize and physically store records in any manner convenient.

### 3. SUMMARY OF THE INVENTION

#### 3.1 Objects of the Invention

To meet statutory and regulatory requirements, the Agent provides Clients through the Customer financial entities with information describing their accounts and their transactions held on the Agent's database. The Customer financial entity may decide to incorporate this account information into their statements to the client, or to have the Agent produce a separate statement. Thus, all activity sweeps, checks written debit/credit card transactions, and so forth appear in the account in the Clients' accounts as well as in the sub-accounts for the Clients when more than one supporting financial entity is used to provide FDIC insurance over \$100,000. Although detail of these sub-accounts may or may not be reported to the client (at the option of the Customer financial entity), the Agent preferably provides the Clients at least with the balances held in each pooled MMDA at each Supporting financial entity.

Next, Client funds for which the Agent is responsible are managed at one or more Supporting banks (financial entities) 25, 26, and 27 in a manner to both qualify for FDIC insurance, limited to \$100,000 per individual beneficial interest per Supporting financial entity, to earn interest, and to permit unlimited withdrawals. To satisfy regulatory requirements, each Supporting financial entity holds a pair of accounts, one account being an interest bearing money market deposit account (MMDA) in which all Client funds are deposited, and the other account being a demand deposit account (DDA) registered in the identical name as the first account (ex., "Administrator as agent for Clients"). For funds transfers from Supporting financial entities, the Agent, first, provides instructions to a messenger who personally requests the withdrawal from the MMDA to the associated DDA in a Supporting financial entity. Funds may be then wired from the DDA out of the Supporting financial entity by the Agent to cover client withdrawals from various sources. Transfer into the pooled MMDA may be direct or through the pooled DDA as dictated by operational convenience. As illustrated, Supporting bank 25 has linked MMDA 28 and DDA 29 between which the Agent exchanges funds 38'. Similarly, the Agent exchanges funds 38" between MMDA 30 and DDA 31 in Supporting bank 26.

Another important source of transactions are sweep transactions received in sweep file forwarded from the Customer financial entities. Where Client transactions made at a Customer financial entity in a certain period generate net credits, the Customer financial entity may sweep excess Client funds to the Agent. In case of the converse, where Client transactions generate net debits at the Customer financial entity, this entity may request funds from the Agent to cover such debits. Alternately, funds may be swept to or from the Agent when funds in Client accounts at Customer financial entities exceed or fall below, respectively, a desired or target minimum balance, which may be the same for all the Customer financial entity's clients, or may vary among the Clients. Sweep files

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may optionally also provide summary or detailed information on the subject Client transactions. The Agent also processes sweep files in real-time to update the net credits and debits and for each Customer financial entity (for each Client if the sweep file contains the necessary information).

Concerning sweep file 230 and its processing at 225, data in the sweep files result from a Customer financial entity's processing of Client debit and Client credit transactions received against this account in most recent complete period. For example, a Customer financial entity processes all Client transactions for the previous, ex., twenty-four hour period to generate the sweep file made available in the current twenty-four hour period. For broker/dealers, for example, these transactions would typically result from Client securities purchases or sales. This file is processed at 225 by the Agent to store the data by Client and Customer financial entity, to accumulate net debits or net credits by Client and Customer financial entity.

Interest earned by the MMDA accounts 229 is a further source of funds for Client accounts. This Interest accrues daily and is posted monthly in the MMDA at the Supporting financial entities and then in the Clients accounts. Interest allocation is performed as previously described in dependence on interest allocation parameters 257 usually supplied from time-to-time by the Customer financial entities.

The above account management processing, including interest allocation, is performed on Agent computer systems programmed to carry out the above methods. FIG. 3 illustrates exemplary systems that are configured from standard commercial-grade components, for example, mainframe-type system 301 coupled to data storage 302 for the Agent databases, here illustrated as the "insured deposits database." A typical processor may be from IBM using an OS/390 or MVS/ESA operating system or the equivalent; a typical database system may be DB2 from IBM or the equivalent, such as products from Oracle Corp.

The above-described elements of this invention relationships may be "packaged" variously to meet the needs of various Customer financial entities. In one embodiment, one Customer financial entity is linked to one Supporting financial entity, so that client accounts may be provided with up to \$100,000 of FDIC insurance along with interest and unlimited withdrawals. In a second embodiment, one Customer financial entity is linked to more than one independent, Supporting financial entity so that its clients may receive more than \$100,000 of FDIC insurance.

In a third embodiment, a Customer financial entity which is a bank or savings institution may wish to retain all Client funds on its own books so that they may be available for its normal financial activities. This is accommodated by having the Agent managed MMDA-DDA pair (or pairs) be held at the Customer financial entity. Otherwise, the Agent systems and methods are as described above. In this embodiment, Client insurance is limited to \$100,000. In such an embodiment, the ownership interests managed by the Agent and recorded on its database may be advantageously realized as separate Client accounts at the Customer financial entity (referred to as a "return sweep account"). Then, a Client will have two accounts, one on the books of the Customer financial entity, for example, a Client demand deposit account, and a second account held on the books of the Agent, a return sweep account. The Agent then manages fund exchanges between

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these accounts so that the funds of all Client return sweep accounts are held in the managed MMDA-DDA pairs.

### 3.2 Regulatory Environment of the Invention

These prior-art problems are satisfied by systems and methods structured according to a novel and creative combination of certain of financial-entity and bank regulations first noticed and assembled by the inventors. First, although accounts that require withdrawal notice are not demand accounts and therefore may earn interest, certain accounts not requiring withdrawal notice may still be deemed "savings accounts" and capable of earning interest. For example, an account that does not require withdrawal notice (but may so require at any time) is nevertheless a savings account if no more than six transfers and withdrawals are made monthly. In particular, 12 C.F.R. § 204.2(d)(1) (underlining added) states:

The term savings deposit also means: A deposit or account, such as an account commonly known as a passbook savings account, a statement savings account, or as a money market deposit account (MMDA) . . . from which . . . the depositor is permitted or authorized to make no more than six transfers and withdrawals . . . per calendar month or statement cycle . . . to another account (including a transaction account) of the depositor at the same institution or to a third party by means of a preauthorized or automatic transfer, or telephonic (including data transmission) agreement, order or instruction, and no more than three of the six such transfers may be made by check, draft, debit card, or similar order made by the depositor and payable to third parties.

However, the precise types of the transfer or withdrawal transaction are critical. An unlimited number of deposits into a savings account is always allowed, and an unlimited number of withdrawals is also allowed if they are of certain limited types. Importantly, 12 C.F.R. § 204.2(d)(2) (emphasis added) states:

Such an account is not a transaction account by virtue of an arrangement . . . that permits transfers of funds from this account to another account of the same depositor at the same institution . . . when such transfers or withdrawals are made by mail, messenger, automated teller machine, or in person . . .

Taken together, therefore, an unlimited number of transfers may be made between a deposit account, that is interest-earning, and a transaction account, that permits an unlimited number of withdrawals of any type, if both accounts are in the same institution, if both accounts are in the same name, and if the transfers are made by messenger. These transfers may be into or out of the interest-earning account, which in the following will be generally be referred to as a money market deposit account ("MMDA")

Second, the \$100,000 liability limitation on FDIC insurance is not determined on a per-account basis, but instead on a per-insured-institution basis, and moreover, applies to all the beneficial ownership interests that a particular ownership category (for example, a particular individual) has in the insured institution, however the accounts or instruments in which these interests are held are actually denominated. Specifically, 12 U.S.C. § 1821(a)(1)(C) states the following (emphasis added):

For the purpose of determining the net amount due to any depositor under subparagraph (B), the [FDIC] shall aggregate the amounts of all deposits in the insured depository institution which are maintained by a depositor in the same capacity and the same right for the benefit



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of the depositor either in the name of the depositor or in the name of any other person.

Without affecting the FDIC liability limit, ownership interests of a particular ownership category may be spread in several accounts or CDs in a single bank or may be held in a single third-party-managed account along with the funds of other ownership interests.

Therefore, the inventors have conceived and implemented arrangements whereby a single corporation, partnership, or other legal person (generally, "entity") acts as an agent of numerous individuals or other ownership interests (for example, joint ownership, ownership in trust (such as individual retirement accounts, and other legally established savings mechanisms), and so forth) to manage the funds of each ownership interest in the aggregate MMDAs in one or more Supporting financial entities so that each ownership interest's funds are earn interest while remaining FDIC insured with insurance up to \$100,000 per each participating Supporting banking financial entity. Further, each Supporting financial entity, such as a bank or a saving institution, holds a single MMDA that is paired with a single corresponding DDA in the same name so that each ownership interest's use of managed funds is not limited.

A major advantage of the inventors' combination is that funds can be managed for any type of client (for example, individual, business entity, governmental entity), because there are no limitations on the type of depositor in a MMDA. Already known account management methods, require an individual account for each participating client resulting in hundreds (or even thousands) of separate accounts at supporting financial entities. Further, where these are NOW accounts, the type of client is limited by Federal banking law.

Further, since many such ownership interests hold their funds in broker/dealers, savings institutions, credit unions, or other financial entities, it is preferable that the agent entity interface to these funds-holding financial entities, and act as their agent where necessary, for the movement of managed funds between these institutions and the managed MMDA-DDA pairs. Additionally, the agency role of the agent entity also extends to a record-keeper function to a greater or lesser degree depending on the Customer financial entity. The Agent then also receives and processes account transaction information generated by all manner of financial instruments and payment vehicles, as well as simply managing the above funds transfers.

The processing for carrying out such funds management as well as any record-keeping functions is implemented by the systems and methods described in the following, where the following terms are used with the indicated meanings:

"Agent", or "Administrator/agent", or "Administrator": collectively refer to the agent entity having an agency (or trustee, or contractual, or other legal) relationship with the individual ownership interests for which it manages funds and (optionally) with the financial institutions or entities where these funds are held.

"Customer financial entity" or "Customer": collectively refer to these financial institutions or financial entities (such as broker/dealers, Investment Advisors, savings institutions, credit unions, and the like) whose client have ownership interests in the one or more deposit accounts managed by the Agents.

"Client of a Customer financial entity" or "Client": collectively refer to the ownership interests that have deposited agent-managed funds at Customer financial entities; the types of Client deposits may be, for example, individual accounts, joint accounts, trust accounts, profit or non-profit

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corporations, limited liability corporations, partnerships or other forms of business entities, government agencies, municipalities, ERISA accounts, non-US accounts, and the like.

"Client account": refers to the accounts in the Customer financial entities where Clients hold the funds that are managed by Agent.

"Supporting financial entity": refers to those financial entities, preferably such as banks and savings institutions, where the MMDA-DDA pairs are held by the Agent, with the MMDA being interest earning and FDIC insured (If Supporting financial entities are referred to in the following as Supporting banks, no limitations is intended.)

These terms refer to roles, and the use of different names does not imply that separate roles must be played by separate entities. For example, in certain embodiments, the Customer financial entity may be its own Supporting financial entity, or may be commonly controlled with its Supporting financial entity. In certain embodiments, the Agent itself may accept funds from its own Clients, and thus also have the role of a Customer, or the Agent may be commonly controlled with a financial entity that accepts funds and has a Customer role.

### 3.3 Systems and Methods of the Inventions

To accomplish these and other objectives, this invention provides systems and methods for managing a plurality of Clients of one or more Customer financial entities by administering at one or more Supporting financial entities, such as banking or savings institutions, an FDIC-insured MMDA (money market deposit account) maintained at each participating Supporting financial entity in which are held some of all of the funds in the managed Client accounts, and for managing an Agent database recording the financial information describing the managed Client balances, Client information for each Client's account, Customer information for each Customer financial entity, financial information describing each aggregate MMDA held at a Supporting financial entity, and information for each Supporting financial entity. Where Client funds are held across more than one MMDA, the funds may be insured to more than \$100,000. For example, if they are held in two (or three, or four) MMDAs (each MMDA held in a different Supporting financial entity), then insurance may be \$200,000 (or \$300,000, or \$400,000).

The Agent also acts as a record keeper for Customer financial entities by directly processing Client deposit and withdrawal transactions in each managed Client account. Processed transactions may be received directly from a wide array of sources (transaction sources). For example, for Client accounts, deposits may be received by means of various electronic and hand delivery systems, and payments may be tendered by means of various financial instruments and payment vehicles, all without limitation as to the number of transfers while interest is earned on the managed, insured Client funds. Optionally, the debiting of funds from each of the client accounts may be monitored, and debits may be authorized or rejected based upon the Client's account balance. In this embodiment, the Agent also maintains on its database records of processed Client transactions (Client deposit and withdrawal transactions), as well as financial information describing the funds managed for each Client and deposited in a MMDA at various Supporting financial entities.

In more detail, the Agent manages in each Supporting financial entity (bank or saving institution) an aggregate money market deposit account (MMDA) and an aggregate demand deposit account (DDA), both being in the identical

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name of the agent for its principals (referred to herein as an "MMDA-DDA pair"). In response to Client deposit and withdrawal transactions stored on the Agent's database, the Agent initiates transfers of funds between the MMDA-DDA pairs, so that if the aggregate deposits of all Clients exceed the aggregate client withdrawals (net Client credit), then all or some of the funds are deposited in the MMDA at the Supporting financial entity, and conversely if client withdrawals exceed client deposits (net Client debit) the Supporting financial entity will be instructed by messenger to transfer funds from the aggregate MMDA to the DDA.

The MMDAs are interest-bearing, insured deposit accounts, collectively in which the managed balances for all Clients of the Agent are deposited. The DDAs, which are deposit accounts permitting an unlimited number of deposits and withdrawals, serve to facilitate the exchange of funds between the MMDAs, the Customer financial entities, and sources of Client transactions (referred to herein as "transaction sources"). If the Agent determines that it is necessary to move funds from a particular MMDA (at a particular Supporting financial entity or bank), it first causes a messenger to have these funds transferred from the MMDA to the DDA member of the MMDA-DDA pair, and second, causes the funds in the DDA to be moved to the Agent's own account or accounts. Then, from the Agent's own accounts, funds may be further transferred to a 3<sup>rd</sup> party, such as a transaction source or a Customer financial entity (preferably by electronic or other automatic means). If funds are to be moved into a particular MMDA, the Agent either may have them deposited into the associated DDA and then moved into the MMDA, or may have them deposited directly into the MMDA. The Agent database is updated to reflect these funds transfers.

In certain embodiments, where the Agent has a single MMDA-DDA pair in which all Agent-managed Client funds are held, Client liability insurance is limited to \$100,000. In other embodiments, where it is preferable to provide Clients with more than \$100,000 of insurance, the Agent has two or more MMDA-DDA pairs, each pair in a different Supporting financial entity, and it manages Client funds so that each Client's ownership interest at any one Supporting financial entity never exceeds \$100,000. For example, when a Client's balance exceeds \$90,000 (or some other operational threshold not greater than \$100,000) in the aggregate MMDA at a particular Supporting financial entity, excess funds are automatically moved to a MMDA at a second Supporting financial entity. Although, Client funds may be from time-to-time be deposited at several Supporting financial entity, the accounting for this funds is preferably consolidated so that the multiple MMDAs are transparent to the investor. All Client funds exchanges and transactions may then post to a single Client account on the Agent database although the balances in this account may spread across multiple MMDAs held at multiple Supporting financial entities (represented as sub-accounts of the single Client account).

The agent also maintains sub-accounts which are attached to the client account on the Agent's database. Each sub-account represents the Client's ownership in the MMDA at the Supporting financial entities. Alternatively, the Agent may generate statements and reports for the Client showing the sub-accounts where the Client's funds are actually held and in which Supporting financial entity individual transactions occurred.

At the time a Client commences using Agent services (or, alternatively, opens a managed account with the Agent associated with an account at a Customer financial entity), the Client is given the option to choose a preferred Supporting financial entity, to choose a list of preferred Supporting finan-

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cial entities in a desired (or random) order of preference, to exclude one or more Supporting financial entities, and the like. The Client may also select the order of preference for deposits and withdrawals. The Agent will then exchange funds with aggregate MMDAs on the Client's behalf, each at a different Supporting financial entity, according to the Client-supplied preferences. In the event that the Client does not supply preferences for the Supporting financial entities, the Agent may automatically designate a list of preferred Supporting financial entities (for example, as a default). Preferences for Supporting financial entities are preferably stored in the Agent database in association with Client's account information, and will be retrieved to determine which Supporting financial entity should accept or provide funds for each net Client credit or debit. Note, that the Agent automatically groups together transactions for each Supporting financial entity, and at the end of the business day, the funds are transferred either to the MMDAs or from the MMDAs via the DDA at the various Supporting financial entities. The transfer to or from the MMDA is the net transaction for all activity that occurred that day.

For example, a Client may open an Agent-managed account with \$170,000, and may also indicate that these funds should be held in Supporting financial entity A and Supporting financial entity C with Supporting financial entity C preferred. Then \$90,000 (or some other threshold) would be deposited into Supporting financial entity C and \$80,000 into Supporting financial entity A. If a check were written or if the Client investor chose to redeem funds directly, the withdrawals would be made first from Supporting financial entity A. Withdrawals would not be made from Supporting financial entity C until all funds had been redeemed from Supporting financial entity A. Similarly, if the Client chose Supporting financial entity C as preferred, and chose to exclude Supporting financial entity B, then \$90,000 would be deposited into Supporting financial entity C and \$80,000 into Supporting financial entity A.

Because the systems and methods of this invention seek to minimize risk as much as possible for its Clients and Customer financial entities, the Agent may choose a deposit cap for each of the multiple Supporting entities. For example, it is preferred that the Agent's total deposits at a Supporting financial entity are preferably no more than 10% of the total deposits at the Supporting financial entity (less preferably, no more than 20%; and much less preferably, no more than 30%). For example, if the total deposits at a particular Supporting financial entity are \$1,000,000,000, then the Agent's total deposits at that entity are preferably no more than 10% of this amount or \$100,000,000 (less preferably, no more than \$200,000,000; and much less preferably, no more than \$300,000,000).

The Client may also choose a deposit cap for each of the multiple Supporting financial entities selected, or can specify deposit caps for default Supporting financial entities chosen by the Agent. Of course, the Client may also specify that all funds be held in a single Supporting financial entity, even if the amount exceeds \$100,000 (insurance being limited to \$100,000 in this case). The Agent may generate statements and reports for the Client either showing only all of the managed assets and transactions as a single account, or also showing the sub-accounts where the Client's funds are held and in which Supporting financial entity transactions occurred.

In these embodiments, therefore, a Clients may earn interest on balances being managed by the Agent. These managed

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funds will be FDIC insured up to \$100,000 per Supporting financial entity and with no withdrawal limits.

### 3.4 Flexible Interest Allocation

Importantly, the Agent provides the ability to flexibly allocate interest income earned by the MMDAs to each Client in a manner specified by the Customer financial entities. Generally, the Agent distributes all the interest or a portion of the interest (the remainder being applied to Agent fees) accrued by the MMDAs to individual Clients having ownership interests in the MMDAs by allocating this interest to the Agent-managed balances of these Clients. Although interest may be distributed by default in proportion to each Client's ownership interest in the MMDAs, it is more preferably for the Agent to distribute the interest as specified by the Customer financial entities. For example, each Customer financial entity may specify methods of interest allocation for its own Clients. This feature allows a Customer financial entity to relatively reward or penalize certain types of accounts in accordance with that Customer financial entity's management or marketing objectives.

Generally, a Customer financial entity specifies interest allocation methods to the Agent by providing parameters that determine a functional relationship between one or more characteristics of a Client account and an interest rate used to compute interest income on the Client's balances. Interest rate may depend on a wide variety of Client-account characteristics, such as, for example, Agent-managed balances, total Client balances at the Customer financial institution, date the Client account was opened, duration the Client has transacted business with the Customer financial entity, address of the Client account, Customer policies and promotions, and so forth. The actual functional relationship between interest rate and such Client characteristics, its parameterization, and its implementation in the Agent systems and methods may be virtually limitless. However, since the variable interest allocation is generally intended to motivate desirable Client behavior measured by one or a few key account characteristics, the interest rate will usually increase (or decrease) monotonically in dependence on the few key characteristics.

In a preferred embodiment, the functional relationship determining interest rate (for a particular Customer financial entity) is implemented largely with one or more interest rate tables. An interest rate table is known herein as a "tier set", which has one or more rows, known as "tiers". Each tier, or row, specifies at least a range for a selected, primary account characteristic along with the interest rate to be assigned to accounts when their selected characteristic in the specified range. For example, where the selected characteristic is account balance, a tier set preferably includes tiers such that whatever its balance an account is assigned some interest rate (almost always, the higher the balance, the higher the assigned interest rate). One of skill in the art will appreciate that a selected functional relationship of account characteristics to interest rate may be implemented by a many tier sets. Because the relation between interest rate determination and tier sets is not unique, what is fundamental is the functional relation determining interest rate; a particular tier set is simply one expression of the fundamental functional relation specified by the Customer financial entity.

In one aspect of this embodiment, the Agent provides interest rates that vary as the amount of managed balances vary, generally the higher the balance, the higher the interest rate. The Agent database stores sets of tables referred to as "tier sets", each table returns interest rates (or a relative interest rate) as a function of the managed balance in a Client's

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account. During the process of interest allocation for a Client account, the Agent retrieves the tier set for a particular Client account, and applies the correct tier to the managed account balance to return an interest rate according to which the interest income is credited to the Client's account balance. The tier set for a particular Client account may be chosen according to information an flags stored as part of the Client information on the Agent database. The tier sets, tiers, and information for selecting tier sets and tiers may be provided by the Customer financial entity.

In another aspect, a Customer financial entity would define its interest allocation with two or more tiers forming a tier set, where the tiers are indexed by additional account characteristics. Then, given a particular Client account, a particular tier in the tier set would be selected according to the additional account characteristics, and the interest rate determined from the particular tier according to the primary characteristic of the Client account. Selection of a tier from a tier set may also depend on policies of the Customer financial entities. For example, a Customer financial entity may decide to start an interest-rate promotion using promotional tiers in the tier set. Then, the Agent would test (for example, a promotions flag in the Customer financial entity data records) to determine if promotional tier should be used to set interest rates.

Tiers in tier sets may have information in addition to a primary-characteristic range and a corresponding interest rate. For example, a tier may have a date range so that it is used to set interest rates only if the date is in the range. The date may be specified absolutely, or relatively, for example, with respect to the opening date of a Client account. Instead of specifying an actual interest rate, a promotional tier may specify an additive or multiplicative amount to be applied to a non-promotional or base interest rate.

The Agent database stores the information necessary to parameterize interest allocation and to determine an interest rate for a Client account. In the case of tiering, this database would store the tiers, tier sets, and the like among the records for the Customer financial entities. The Client account records in the database would also have information (such as flags indicating promotions) concerning account characteristics necessary for the tiering computation. Also, the Customer financial entity records may store policy flags and other data, if necessary for tier set selection.

In a concrete preferred embodiment, a Customer financial entity, such as a broker/dealer, an investment advisor, a credit union, or other financial entity, may wish to pay higher interest rates to accounts with larger balances because they are usually more profitable than accounts with smaller balances, and may also wish to run interest rate promotions from time-to-time. Accordingly, this Customer financial entity may specify a tier set with a base tier set applicable to all its Client in the absence of further indication in the account. Typically, a base tier set leads to the same interest rate for all account balances (for example, by having a single tier). The tier set would also have a standard tier set (or more than one) leading to increasing interest rates with increasing balances. Finally, there would be one or more promotional tier sets that determines the promotional interest rates. The promotion tier set may also include time information. For example, all Client accounts opened from April 1<sup>st</sup> through June 30<sup>th</sup> earn 5%, but after June 30<sup>th</sup> all accounts in the tier group will default to the a tier set that determines interest rates based on the balance in the account. Alternatively, the promotional tier set may specify that each account has an individual promotional period. For example, an account may earn a promotional rate for the first 60 days after it is opened at the Customer financial entity. On the 61<sup>st</sup> day, the account will default to a standard.

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Further, in this concrete embodiment, the Client account records for the Customer financial entity in the Agent database would have one or more tier set indicators, or other flags or data, that specify which tier set to apply to this Client. Agent methods would provide the Customer financial entity with the ability to set this indicator from time-to-time so that the intended accounts will have intended interest rates.

The wide flexibility of these embodiments is illustrated by the wide choice of tier sets and of the wide choice of characteristics and factors defining particular tiers in the tier sets. For example, a Customer financial entity may select a group of clients it wishes to favor or attract. In order to expand into a new geographic area or market segment, it may wish to favor such Clients. Clients may be favored if they transact additional business with the Customer financial entity, and so forth. This Customer financial entity may then supply the agent with the favored tier set and tiers along with appropriate Client identification information so that and the selected Clients (by residence, customer type, business characteristics, or the like) will receive the targeted rates. In this manner, a Customer financial entity may even choose to reward individual Clients identified by name or account number. Further tier sets and functions may depend on variables other than the managed account balances. Such other variables may include the total amount that a Client has invested at (or on loan from) a Customer financial entity (whether or not managed by the Agent), the length of time that the Client has been transacting business with the Customer financial entity, and so forth as will be apparent to those of skill in the art.

In the certain cases, a Customer financial entity's requested interest allocation may require more funds to be credited to its Clients than is generated by interest income from the Client funds managed in the MMDAs. The Customer financial entity may then be requested to transfer funds to cover this interest income shortfall. In the converse case, the Agent may transfer excess interest income to the Customer financial entity for its own use.

Agent operation for tiered interest rate implementation is flexibly programmed so that any number of tier sets, based tier sets, promotional tier sets, and tiers can be utilized with full adjustment of tier numbers, levels and time period, as selected and controlled by the Customer financial entity. The Customer financial entity may also indicate the duration of promotional tiers or interest rates and provide Client information fields and flags so that the Agent may chose the Customer financial entity's intended tier for each Client.

In other embodiments, interest rates may be determined by methods that are not table driven. The Customer financial entity may provide rules (such as "IF-THEN" rules) that the Agent will execute for each Client in order to determine the intended interest rate. The "IF" part of these rules will depend on such characteristics and indicators as are described above. The "THEN" parts may return an interest rate or link to further rules for further tests. In a further implementation, the Customer financial entity may even provide an executable module that the Agent will "call" (or otherwise execute) during interest rate allocation and that returns an interest rate suitable for each Client account.

Clearly, other embodiments that include other combinations of the basic features of this invention may be appropriate

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for other Customer financial entities. This invention would be understood by one of skill in the art to include such other embodiments.

#### 4. BRIEF DESCRIPTION OF THE DRAWINGS

The present invention may be understood more fully by reference to the following detailed description of the preferred embodiment of the present invention, illustrative examples of specific embodiments of the invention and the appended figures in which:

FIG. 1A illustrates an exemplary embodiment of accounts, funds flows between accounts, and database records managed by the Agent, where MMDA refers to money market deposit account, where DDA refers to demand deposit account, and where OI refers to ownership interests of Clients in the MMDAs;

FIG. 1B illustrates interest an exemplary embodiment of interest allocation in the invention FIGS. 2A-B illustrate an exemplary embodiment of the processing operations of this invention;

FIG. 3 illustrates an exemplary embodiment of a system of this invention; and

FIG. 4 illustrates an exemplary embodiment of interest-allocation processing of this invention.

#### 5. DETAILED DESCRIPTION OF THE PREFERRED EMBODIMENTS

Described next are specific preferred embodiments that are within the general scope of the invention as set forth in the preceding section. This description includes preferred details of the Agent-managed accounts and funds transfers, preferred interest allocation methods, and exemplary processing methods and systems.

##### 5.2 Agent-Managed Accounts

FIG. 1A is a exemplary general embodiment of the financial relationships and legal relationships (contractual, agency, and the like) that are present in this invention. Centrally illustrated in FIG. 1A are Agent and Agent database 2 with exemplary records 18, 19, 20, 21, 22, 23, 32, 33, and 34. Records 18 and 19 are for Clients of Customer financial entity 1, and record 20 holds the interest allocation parameters prescribed by that Customer financial entity. Similarly, the Agent database stores Client records 21 and 22 and interest allocation parameter record 23 for Customer financial entity 2. In various embodiments, the organization sponsoring the Agent, or an organization commonly controlled with the Agent organization, may have its own direct clients with Agent-managed accounts. Hence, also stored are Client record 34 and interest allocation parameter record 33 for direct Clients of the Agent. Finally, records 17 are Agent database records for further Customer financial entities.

It will be understood that certain non-essential aspects illustrated in FIG. 1A (and in the other figures) are for convenience of illustration and are not to be taken as limiting. Thus, while records 15 for Customer financial entity 1 (and records 16 for Customer financial entity 2, and records 32 for the Agent's direct Clients) are illustrated as grouped, they may be structured in an actual Agent database in any convenient manner known in the art. Also, although each of the records is illustrated by a single block, this information may be actually stored in any number of logical or physical records.

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Next, exemplary Customer financial entities are illustrated in the upper left section of FIG. 1A. Accordingly, Customer financial entities 5 and 7 have respective Client accounts 8, 9, 10, and 11. Client A has account records 8 and corresponding Agent records 18; and similarly Client B has records 9 and 19; Client C has records 10 and 21; and Client D has records 11 and 22. There will usually be further Clients and Customer financial entities 6 with corresponding Agent data 17. Records of direct Agent clients, such as record 34, combine both Customer-like information with Agent-like information. Although the Agent may appear to Clients of Customer financial entities as a bank-like financial entity, it is not actually a bank and holds no funds. All Agent-managed funds are held in money market deposit accounts in Supporting financial entities banks. Thus, illustrated in the bottom section of FIG. 1A is exemplary Supporting bank 25 with MMDA 28 linked to DDA 29, and exemplary Supporting bank 26 with its MMDA 30 linked to DDA 31. An embodiment may use additional Supporting banks 27. As illustrated, each Supporting financial entity holds a single MMDA and a corresponding DDA.

Further, the Agent exchanges funds and information with one or more, and usually several, transaction-processing financial entities illustrated in the upper right segment of FIG. 1A. It is by means of these transaction-processing financial entities, which preferably service many of the transaction vehicles provided by modern financial services, that Clients may access their Agent-managed funds for deposits and withdrawals. FIG. 1A individually illustrates several significant transaction sources. Thus, card services 48 represents credit and debit card processing organizations and networks. Internet bill payment services 49 represents service providers for bill payment, checks, and funds exchanges generally by means of the Internet (or other electronic or network means). ACH debits and credits 50 represents various direct deposit and withdrawal clearinghouse services. Check payment services 51 represent debit and credit transactions generated by paper check processing. Because these individually illustrated transaction sources are illustrative and not limiting, other transaction sources 52 represents transactions generated as a result of other payment vehicles (such as touch-tone bill payment). Accordingly, Clients may access their Agent managed funds by credit and debit cards, for Internet transactions, by direct deposits and withdrawals, by checks, and by other payment and funds exchange vehicles.

Various embodiments of the invention may provide more or fewer transaction sources as well as transaction sources of different types (or of types yet to be developed). In other embodiments, one or more (up to all) transaction sources may interface with the Customer financial entities, which then provide summary information to the Agent via the illustrated sweep files. For example, in the case of broker/dealers, investment advisors, and the like, securities transactions may be processed directly by these Customer financial entities. In this embodiment, the Agent may directly interface with only a few or no transaction sources.

Lastly, FIG. 1A illustrates information and funds exchanges present in general embodiments of the invention that are between the Agent and these financial entities that cooperate to provide the Agent-managed accounts of this invention. Exchanges 36 are between the Agent and the transaction sources. These transaction sources typically package a day's transactions in transaction files which are transmitted daily to the Agent. The Agent causes necessary funds' exchanges by, for example, wire transfers between Agent accounts and the transaction-source financial entities.

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Exchanges 35 are between the Customer financial entities and the Agent, and are usually implemented by exchange of sweep files, such as sweep files 45, 46, and 47. These sweep files usually have instructions for funds transfer between the Agent and its Customer financial entities along with summary transaction information. Funds transfers here are also typically implemented by wire transfers between Agent accounts and the Customer financial entities.

Finally, exchanges 37 are between the Agent and its Supporting financial entities (banks and savings institutions). These (usually) daily transfers preferably balance the net results of all prior Customer financial entity and Client transaction activity exchanges 35 and 36 by making necessary deposits or withdrawals at the Supporting financial entities. Importantly, the Agent causes withdrawals by, inter alia, generating instructions for a messenger to have the Supporting financial entities move funds from their MMDAs to their corresponding DDAs.

As illustrated, the Agent is generally central in these information and funds exchanges, receiving and processing transaction data and then causing necessary funds transfers.

For each Client account at a Customer financial entity participating in Agent services, the Agent tracks managed funds by storing one or more database records (representing "accounts") with financial information describing the Client funds being managed by the Agent. As illustrated, Client A's account 8 and Client B's account 9 at Customer financial entity 1 correspond to stored records 18 and 19; similarly, Client C's account 10 and Client D's account 11 at Customer financial entity 2 correspond to stored records 21 and 22. This financial information describes, at least, each Client's ownership interests ("OIs") in the MMDA at each Supporting financial entity, that is the amount of that Client's funds held in each MMDA, along with the total funds being managed for that Client (namely, the sum of the MMDA OIs). The Client records also preferably store information representing basic Client identifications, such as name, address, social security number, and the like, information representing Customer financial entity association, such as Client account number at the Customer financial entity, Client characteristics at the Customer financial entity important to Agent management, and the like, and additional Client related information (not illustrated).

The Agent database also preferably additionally stores records describing representing the Customer financial entities, such as records 15 and 16. These stored records represent at least Customer financial entity identification and such other information as the Agent needs to manage the Customer financial entity's Clients, including importantly parameters provided by the Customer financial entity to guide interest allocation. Thus the records describing Customer financial entity 1, records 15, include its interest allocation parameters and instructions 20, and those for Customer financial entity 20, records 16, include its interest allocation instructions 23. Where interest is allocated according to tier sets and tiers, the interest allocation records described the Customer-financial-entity-defined balance balance-tiers and associated interest rate, both of which may be changed by the Customer financial entity from time-to-time. Although FIG. 1A illustrates all the records for the individual Customer financial entities being grouped together, actual implementation of the Agent database may organize and physically store records in any manner convenient.

To meet statutory and regulatory requirements, the Agent provides Clients through the Customer financial entities with information describing their accounts and their transactions held on the Agent's database. The Customer financial entity

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may decide to incorporate this account information into their statements to the client, or to have the Agent produce a separate statement. Thus, all activity sweeps, checks written debit/credit card transactions, and so forth appear in the account in the Clients' accounts as well as in the sub-accounts for the Clients when more than one supporting financial entity is used to provide FDIC insurance over \$100,000. Although detail of these sub-accounts may or may not be reported to the client (at the option of the Customer financial entity), the Agent preferably provides the Clients at least with the balances held in each pooled MMDA at each Supporting financial entity.

Next, Client funds for which the Agent is responsible are managed at one or more Supporting banks (financial entities) 25, 26, and 27 in a manner to both qualify for FDIC insurance, limited to \$100,000 per individual beneficial interest per Supporting financial entity, to earn interest, and to permit unlimited withdrawals. To satisfy regulatory requirements, each Supporting financial entity holds a pair of accounts, one account being an interest bearing money market deposit account (MMDA) in which all Client funds are deposited, and the other account being a demand deposit account (DDA) registered in the identical name as the first account (ex., "Administrator as agent for Clients"). For funds transfers from Supporting financial entities, the Agent, first, provides instructions to a messenger who personally requests the withdrawal from the MMDA to the associated DDA in a Supporting financial entity. Funds may be then wired from the DDA out of the Supporting financial entity by the Agent to cover client withdrawals from various sources. Transfer into the pooled MMDA may be direct or through the pooled DDA as dictated by operational convenience. As illustrated, Supporting bank 25 has linked MMDA 28 and DDA 29 between which the Agent exchanges funds 38'. Similarly, the Agent exchanges funds 38" between MMDA 30 and DDA 31 in Supporting bank 26.

### 5.3 Agent-Managed Funds Transfers

Generally, in this invention, the Agent receives actual funds from various financial entities and wires funds out to various financial entities, namely, the Customer financial entities 35, the Supporting financial entities 37, vendors (also referred to as transaction sources) that provide services for the Clients 36, and also direct Clients of the Agent that are not associated with any Customer financial entity. The Agent receives funds from various sources, such as sweep purchases of Clients at Customer financial entities, checks, wire transfers, ACH incoming transactions for, e.g., Client payroll and Client social security deposits, into a subscription account (or several subscription accounts) for further credit to the client's account as a deposit. These funds (after being netted against Client debits) are then to be deposited into the Supporting financial entity. The Agent also sends funds from the subscription account or accounts to pay for various types of withdrawals, such as on-line bill payment capabilities for Clients, ACH debits received from other banks at Clients' requests, touch-tone bill payment, and so forth. Further, the Agent may send funds for checks presented for payment against the Client accounts and for card transactions.

In more detail, the Agent determines the amounts of actual funds to transfer as a result of processing transactions received during its financial processing cycle (usually daily, but other periods known in the art may be used). One important source of transactions are vendors that provide payment services (both credits and debits) for the Clients and that periodically (e.g., daily) forward files to the Agent containing accumulated transactions of the Clients of the Agent (illus-

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trated as Transaction sources 4 in FIG. 1A). Services provided by such vendors include processing of credit and debit cards, ACH credits and debits, Internet bill payments, check payments, and of other types of transaction known in the art. These transaction files are processed, preferably when received (in real-time), by the Agent to update the net credits and debits for each Client, and also the net credits and debits for each Customer financial entity in view of its Clients' net activities.

Another important source of transactions are sweep transactions received in sweep file forwarded from the Customer financial entities. Where Client transactions made at a Customer financial entity in a certain period generate net credits, the Customer financial entity may sweep excess Client funds to the Agent. In case of the converse, where Client transactions generate net debits at the Customer financial entity, this entity may request funds from the Agent to cover such debits. Alternately, funds may be swept to or from the Agent when funds in Client accounts at Customer financial entities exceed or fall below, respectively, a desired or target minimum balance, which may be the same for all the Customer financial entity's clients, or may vary among the Clients. Sweep files may optionally also summary or detailed information on the subject Client transactions. The Agent also processes sweep files in real-time to update the net credits and debits and for each Customer financial entity (for each Client if the sweep file contains the necessary information).

Resulting from this transaction processing are final net credits or final net debits due at each Customer financial entity and at each service vendor that provides a transaction file. The Agent may cause these net funds to be transferred by wire or other means at any time after the final nets are determined. Next, the resulting final net Client credits or net Client debits are allocated among the MMDAs. Where an embodiment manages only a single MMDA at a single Supporting financial entity, then all the net Client credits and debits are netted to a final amount to exchange with this Supporting financial entity. Where several MMDAs are managed at different Supporting financial entities, the final net Client credits or net Client debits are allocated among the available MMDAs according to preferences stored in the Client database records. These allocated amounts for all the Clients are then netted to obtain the final amounts to exchange with each of the Supporting financial entities. Funds transfers with the Supporting banks are managed as described above (with messengers for withdrawals) in order to satisfy regulatory requirements.

Concurrently, the Agent database is updated with information in the received transaction files so that it may track deposits to, and withdrawals from, each of the Client accounts at the Customer financial entities, Customer sweep activity, and the like. The database is further updated with net credits and net debit information and with funds transfer information, as well as with each Client's current proportionate and/or monetary share in the MMDAs.

Preferably, the foregoing procedures are structured in a manner so as to permit broker/dealers, savings institutions, credit unions and other Customer financial entities to continue servicing their Clients as they have done in the past with minimum disruption to their existing processes and systems. In this manner, the invention would be virtually transparent to presently-existing financial entities, and Customer financial

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entity personnel would not be burdened with the requirement to perform unfamiliar and potentially time-consuming procedures.

#### 5.4 Methods of Interest Allocation

As the MMDAs at the various Supporting financial entities accrue interest, all or a portion (for example, interest less Agent fees) of this interest is distributed to individual Clients. FIG. 1B, which is identical to FIG. 1A except that funds exchanges 35, 36, and 37 of FIG. 1A are absent and interest distribution 40 is present, details this important Agent function. Each pooled (or aggregate) MMDA preferably earns a maximum interest return compatible with its insured status, which is credited by the Supporting financial entity to the MMDA. The Agent then distributes ownership of accrued interest to the ownership interest ("OIs") of individual Clients which are recorded in the Client records in the Agent database. In FIG. 1B, this interest distribution (also referred to herein as "interest allocation") is illustrated by multiply-headed arrow 40 linking the MMDAs, where the interest is accrued, to the Agent database records, where the interest is accounted for by increases in the Client OIs. This function does not necessarily involve actual funds transfer, because the distributed interest is accrued periodically in the Client's accounts and may be withdrawn according to the funds exchanges illustrated in FIG. 1A in response to debits in Client accounts.

Interest allocation, or distribution, may be performed by several methods. In a simple method, interest earned by an MMDA is proportionally allocated to the Clients according to the relative OIs in that MMDA. It is preferable, however, to allocate interest flexibly and especially in response to requests of the Customer financial entities. Accordingly, FIG. 1B illustrates that interest for the Clients of Customer financial entity 1 are allocated according to allocation methods 41; interest for the Clients of Customer financial entity 2 are allocated according to allocation methods 42; and further Customer financial entities may request further allocation methods 43. These allocation methods may simply be based on relative OIs (optionally, the Agent's default allocation method), or may be procedures provided by the Agent but parameterized by the Customer financial entities, or may be provided as a complete allocation procedure by the Customer financial entities. Depending on the Customer financial entity's chosen allocation method and the distribution of Clients of the Customer financial entity, the Agent may distribute an amount of interest that does not equal the interest returned from the MMDAs for this Customer financial entity.

The total amount of interest to be allocated to all the Clients of a single Customer financial entity (the Customer financial entity's share of the interest) is usually set to be the proportionate to those Clients' share of the total interest earned by the MMDAs. The Customer financial entity's allocation method than allocates that total among the Customer financial entity's Clients. It may happen the Customer financial entity's chosen allocation method distributes more or less than that that Customer financial entity's share. In this case, excess interest may be transferred to the Customer financial entity and deficits requested from the Customer financial entity. Optionally, the Agent itself may allocate interest among its Customer financial entities in an other-than-proportionate manner in order, for example, to encourage Customer financial entities to provide more Clients for the Agent.

Advantageously, interest allocation methods may be further customized to meet Customer financial entity marketing needs, such as acquiring new deposits, encouraging larger

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deposits, and so forth. Broker/dealer customers would find this facility especially advantageous because statute and regulation have prevented them from offering interest incentives in the past based on money market mutual funds.

A preferred incentive allocation is based on "tiering", that is assigning interest rates to Clients based on their Agent-managed balance (or other Client account parameter that a Customer financial entity seeks to incent). First briefly in overview, interest allocation features of the present invention are selectively enhanced by system control of tiered interest rate allocations ("TIRA"). As noted above, Client account balances managed by the Agent are tracked on a periodic e.g. daily basis. TIRA methods tests the then current account balance for each Client having funds under Agent management. Based on the ascertained balances, the Client account is placed in one of two or more available tiers (where a method with a single tier implement a single interest rate for all accounts), with the selected tier level corresponding to the appropriate interest rate to be paid on that account balance during the deposit period. Exemplary TIRAs are found in Table 1:

TABLE 1

Tier I - Balance greater than \$1; less than \$5000	Rate = 2%
Tier II - Balance greater than \$5,000; less than \$10,000	Rate = 3%
Tier III - Balance greater than \$10,000; less than \$25,000	Rate = 4%
Tier IV - Balance greater than \$25,000; less than \$50,000	Rate = 5%
Tier V - Balance greater than \$50,000	Rate = 6%

Interest rates assigned according to Table I provide incentives for Client account holders to increase their respective balance in order to achieve higher interest rates within the system constraints. Thus, TIRAs track the accounts and apply the appropriate interest rate to the current balance in accordance with the stored protocol.

One refinement of the TIRA method is to assign interest rates on, for example, the total balances held by a Client in all the Client's accounts with the Customer financial entity. Alternatively, interest rates may be tiered according to account balance and the length of time the Client has transacted business with the Customer financial entity,

A further refinement of the TIRA operation includes applications to pre-defined Customer financial entity promotions. A spectrum of potential promotional tier stratagems may be stored in the Agent database, and thus are selectively available for use to assist product marketing. Exemplary promotional structures include a single "fixed" tier level (single interest rate) and "variable" tier levels, with interest rates higher for an initial period before returning to base line levels. The fixed tier structure insures that a Client account earns the same level of interest rate for the promotional period, independent of balance. For example during the promotional period an account may accrue interest at a rate of 5 percent—that is—the rate associated with the tier corresponding to a balance of \$25,000 to \$100,000 (in Table I), even though the account balance is only \$6,000.

Variable tier levels can enhance the interest rates in some or all of the tiers during the promotional period by some factor. For example, during the promotion the enhancement may be 50 basis points ("BP") above the current tier (alternatively, a 15% interest rate bonus), thereby providing a bonus computation of this amount independent of the actual balance, but tied to the balance as done in normal non-promotional operation. Table II below exemplifies a variable promotion TIER arrangement:



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TABLE II

Base Tiers			
Tier I - Greater than \$1 - less than \$5000	Rate = 1%		
Tier II - Greater than \$5,000 - less than \$10,000	Rate = 2%		
Tier III - Greater than \$10,000 - less than \$25,000	Rate = 3%		
Tier IV - Greater \$25,000	Rate = 4%		
Bonus:			
Variable Promotion A		BPs	Period
Tier I - Greater than \$1 - less than \$5000	Rate = 2%	+ .50	4/1-6/30
Tier II - Greater than \$5,000 - less than \$10,000	Rate = 3%	+ .25	4/1-6/30
Tier III - Greater than \$10,000 - less than \$25,000	Rate = 4%	+ .75	4/1-6/30
Tier IV - Greater \$25,000	Rate = 5%	+ .00	4/1-6/30
Bonus:			
Variable Promotion B		BPs	Period
Tier I - Greater than \$1 - less than \$5000	Rate = 2%	+ .50	5/1-7/30
Tier II - Greater than \$5,000 - less than \$10,000	Rate = 3%	+ .50	5/1-7/30
Tier III - Greater than \$10,000 - less than \$25,000	Rate = 4%	+ .00	5/1-7/30
Tier IV - Greater \$25,000	Rate = 5%	+ .00	5/1-7/30

Other parameters defining the tiers may be also adjusted by the Customer financial entities to address market conditions. Adjustment (bonus) periods may be lengthened, tiers added or subdivided, and rates may be coupled to current market indexes, such as the one-year Treasury note or Federal Funds rate. Entry of the new tier parameters into the Agent systems and methods implements the new structure.

FIG. 4 is an exemplary embodiment of Agent processing that is performed for each Client account that implements the preferred tiered interest rate system. As discussed above, the Agent database for each account includes one or more fields with data entries that identify, characterize, and classify each Client from the Customer financial entity's perspective. Preferably, one of these data entries is a promotional field flag indicating whether or not the current account is operating during a pending promotion. This flag is tested at step 401.

A positive response to this test leads to step 403 that determines the particular promotion (from further account record fields) and checks whether this promotion is still active (for example, has not expired). Data for the latter check is retrieved from the Customer financial entity's interest allocation parameters stored in the Agent database. If the promotion is still active, then the promotional interest rate is set 405 for this Client, again using the Customer financial entity's interest rate allocation data. If no promotion is active, the Agent then determines 407 that client tier set (set of tiers that may apply) and particular tier (within the determined tier set) from fields in the Client database record that characterize the type of Client. Next, the interest rate is set 409 using the Customer financial entity's interest rate allocation data.

Interest rate allocation for this Client concludes when the Agent uses the determined interest rate and Client's account balance to calculate 411 the amount of Client interest

### 5.5 Exemplary Agent Methods

On a regular and, preferably, periodic basis (for example, twice daily, daily, every other day, and so forth), the Agent performs an account-management-processing cycle during which it processes transactions for the Clients of Customer

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financial entities (and at the Agent itself where it or a commonly controlled entity holds Client accounts) received from various sources. For concreteness and simplicity of description (and without limitation), an Agent processing cycle is described in terms of two phases: a Client/Customer financial entity first phase, and a Supporting financial entity second phase.

Briefly, in the Client/Customer first phase, funds transfers needed between the Agent and the broker/dealers, investment advisors, savings institutions, credit unions, other Customer financial entities, and vendor financial entities that provide transaction services for the clients (referred to above also as "transaction sources") are determined, and the necessary instructions to cause these funds transfers are issued. In this phase, transaction data received for all Client accounts (and new accounts) at all the Customer financial entities (and at the Agent itself where it holds Client accounts directly) is processed in order to obtain for each Client account the net debit or the net credit in that account for that particular period, and its distribution to or from the one or more MMDAs in the Supporting financial entities (with a single MMDA held in each entity). Transaction data is received from the various transaction sources or via sweep files or both.

Also in the first phase, for each Customer the Agent sums the net debits and the net credits received from the Customer for their clients on the daily sweep transaction file to obtain the total net debit or net credit at the Customer financial entity. If the net activity is a credit, the Customer financial entity will transfer funds to the Agent; if the net activity is a debit, the Agent then issues instructions to transfer funds to the Customer financial entity. Exchange of funds with the Agent and then among the Clients of any one Customer is according to that Customer's normal processing. Finally, as the transaction files from the various Transaction sources are processed, the net credits or debits between the Agent and that Transaction source are determined, and instructions to cause this transfer are issued.

In the second phase, the Agent sums the net debits and net credits for all Clients with funds for a Supporting financial entity, and then issues instructions to transfer this amount to or from, respectively, the Supporting financial entity. In the case where the Agent manages two or more MMDAs at two or more Supporting financial entities, the Client net credits and debits are preferably allocated to the Supporting financial entities according to preferences stored in the Client records in the Agent data base. For withdrawals from a Supporting financial entity, the Agent instructs a messenger to have the funds moved from the MMDA to the associated DDA, and then withdraws the funds from the DDA. For deposits, the Agent may direct funds to either the DDA or directly to the MMDA.

This description and the following details are exemplary, and one of skill in the art will recognize that the individual steps illustrated herein may be split, combined, or otherwise rearranged, that the orders of the individual steps and of the phase may be changed, and that other alterations are possible without degrading Agent account management functions. For example, in one alternative, all phases may occur together so that after processing data for each Client account and Customer financial entity, the Supporting financial entity net debit/credit amounts are updated.

These Agent processing phases are now described in more detail with reference to FIGS. 2A-B. FIG. 2A illustrates that the Client/Customer first phase includes two principal processing components or activities that are linked by updates stored in Agent database 204. Generally occurring first in time is the real-time transaction file processing (left portion of



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FIG. 2A) during which the daily transaction files are processed as they are received and the Agent data base is updated with the transaction results. Generally following the transaction-file processing in time is the per Client/Customer processing during which the Clients and Customer financial entities having transaction activities for the period recorded on data base 204 are individually processed to determine the resulting total net credits or net debits.

Turning to the real-time transaction-file processing, preferably, the Agent systems and methods are structured and configured to receive and process transactions from many normal financial transaction sources and vendors of financial services. Accordingly, FIG. 2A illustrates input of standard sources of credit transactions, namely check deposits 231, Federal Reserve Bank wire deposits 233, and ACH (clearing house) deposits 235. Similarly, the Agent processes debits to Client accounts from a number of sources. Direct debit withdrawals are received and processed at 237. For credit and debit cards, the issuing bank through the card association network provides 247 a transaction file which is processed at 239. Activity in debit accounts is processed at 241, and direct Client withdrawals (for example, a withdrawal made by means of the Agent) are processed at 243. Various sources provide files of debit transactions, including checks presented for payment 249, ACH (clearinghouse) debits 251, bill payments made through Internet bill payment methods 253, and automated telephone bill payment methods such as touch-tone bill paying 255. In various embodiments, Agent methods and systems may receive and process transaction for other transaction sources, such as transaction made in person or received by mail and that may be manually keyed (or scanned) into the system.

Transaction files are processed by a hierarchy of one or more processing steps: deposit files are processed at 223; debit/credit card files are processed at 224; various debit transaction files are processed first at 245; and along with other debit transactions are processed at 227. (Note that certain sources may provide debits or credits; for example, card processing usually returns debit transactions but may return an occasional credit if a Client returns an item.) These processing steps generally perform the following similar functions. First, details of individual transaction are preferably stored on the Agent data base on a per Client and per Customer financial entity basis, and as they are being stored (or in subsequent steps), net credits and net debits for each Client and each Customer financial entity are accumulated and stored. Second, net debits or net credits are also accumulated for each of the transaction sources, and after each file is processed, instructions are generated to exchange the net funds with that source.

Concerning sweep file 230 and its processing at 225, data in the sweep files result from a Customer financial entity's processing of Client debit and Client credit transactions received against this account in most recent complete period. For example, a Customer financial entity processes all Client transactions for the previous, ex., twenty-four hour period to generate the sweep file made available in the current twenty-four hour period. For broker/dealers, for example, these transactions would typically result from Client securities purchases or sales. This file is the processed at 225 by the Agent to store the data by Client and Customer financial entity, to accumulate net debits or net credits by Client and Customer financial entity.

The Agent data base 204 is updated by this transaction processing, and the updated database is input to the following per Client/Customer processing.

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In FIG. 2A, a "mainline" of per Client/Customer processing extends from 201 directly to 213. Beginning at 201 the Agent starts processing the updated items on the data base for the Clients and the Customers. If the current data item represents a new Client account, then the account is opened and initialized 202 by creating appropriate records in the Agent database. Since these records include the Supporting-financial-entity-preference list of Clients, this list is initialized 215 from either actual Client input or by the Agent in the absence of Client input, and initial deposits are then processed 217. Next, if this Client account has associated credit or debit cards, the card payment network is initialized for the next period's card transactions by creating a position file 203, as is known in the art. This position file is transmitted to the card's issuing bank 219, which then updates the card network 221 so that it may approve or deny transactions in the next processing period (for example, the next day after the current day).

Next all the data base updates with the net credits and net debits for the entity, Client or Customer financial entity, described by the current item being processed are retrieved and combined into a total net 205 for the Client or Customer financial entity. For a Customer financial entity, then Agent may then issue instructions to perform the necessary funds exchanges 259 with that Customer financial entity. Also, concurrently Agent may receive (or already has received) funds swept on that Customer financial entity's initiative.

For each Client account, the next steps of Agent processing are to allocate deposits or withdrawals to the MMDAs in various Supporting financial entities. (If there is only one Supporting financial entity, allocation processing is unnecessary). Each Client account record stores preferences for the various Supporting financial entities, either chosen by the Client or set by default. This list is retrieved 209 and the funds to be exchanged allocated 211 to the preferred Supporting financial entities.

As described, this allocation, preferably, holds funds so that the more preferred Supporting financial entities hold no less funds than the less preferred Supporting financial entities, and each Supporting financial entity holds no more than some threshold (for example, \$90,000) that is less than \$100,000 for each Client. The result of these last steps are the net funds to be deposited or withdrawn at each Supporting financial entity.

Interest earned by the MMDA accounts 229 is a further source of funds for Client accounts. This Interest accrues daily and is posted monthly in the MMDA at the Supporting financial entities and then in the Clients accounts. Interest allocation is performed as previously described in dependent on interest allocation parameters 257 usually supplied from time-to-time by the Customer financial entities.

Agent processing for a chosen data base item completes at step 213. Then, the Agent picks a next data base item for the next Client or Customer financial entity and begins processing again at 202 until all data base updates made by the transaction processing have been handled.

Finally, FIG. 2B illustrates processing for the Supporting financial entity phase of the Agent processing cycle. Further, since each net client debit or credit is withdrawn or deposited to one or more pooled MMDAs in the supporting financial entities, essentially the same summing or netting must be done for each Supporting financial entity as for each Client. The result may be \$0, but is usually an amount of funds that must be transferred to or from the MMDAs in the Supporting financial entities to match excess Client (and Transaction source) withdrawals or deposits. Thus, for each Supporting financial entity 273, the net credits or net debits determined for that Supporting financial entity are retrieved 275 and

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summed 277 to obtain the net total debit or credit at that Supporting financial entity. If the total net is a credit 279, then these funds are deposited to the MMDA(s) at that Supporting financial entity in any convenient manner, optionally by means of the associated DDA(s). If the total is a debit 279, then the Agent generates instructions for a messenger to have the total transferred from the MMDA(s) to the associated DDA(s) and finally transfers the total from the DDA(s) in any manner convenient. The processing is repeated for the next Supporting bank 285. In alternative embodiments, one or more of the steps 263, 265, and 267 may be integrated with Client processing; in other embodiments these steps may be a separate process following Client processing.

The Agent transfers and receives funds for the Customer financial entities, transactions sources and for the Supporting financial entities through an administrative account. All these transfer must, as a group, sum/net to \$0, because as an agent, the Agent does not accept deposits or grant credits. In essence, the Agent performs a system-wide crossing/clearing function.

#### 5.6 Exemplary Agent Systems

The above account management processing, including interest allocation, is performed on Agent computer systems programmed to carry out the above methods. FIG. 3 illustrates exemplary systems are configured from standard commercial-grade components, for example, mainframe-type system 301 coupled to data storage 302 for the Agent databases, here illustrated as the "insured deposits database". A typical processor may be from IBM using an OS/390 or MVS/ESA operating system or the equivalent; a typical database system may be DB2 from IBM or the equivalent, such as products from Oracle Corp.

System 301 is also in communication 303 with Customer financial entities, Supporting financial entities, Clients (where the Agent provides statements and account information directly to Clients), sources of financial transactions (such as those illustrated in FIG. 2A), transfer agents of its Customer financial entities, and Supporting financial entities, and other data sources as necessary. Communication may be by TCP/IP, IBM SNA, or other (bisynchronous) to interface devices attached to system 301. Typically transaction and account information files are transferred over these links.

The methods of this invention may be programmed as one or more modules in convenient commercial programming languages. Either all or a portion of these modules implementing the methods of this invention may be packaged as program products on standard computer readable media (such as magnetic tapes, magnetic or optical discs, and the like).

#### 5.7 Additional Specific Embodiments

The above-described elements of this invention relationships may be "packaged" variously to meet the needs of various Customer financial entities. In one embodiment, one Customer financial entity is linked to one Supporting financial entity, so that client accounts may be provided with up to \$100,000 of FDIC insurance along with interest and unlimited withdrawals. In a second embodiment, one Customer financial entity it linked to more than one independent, Supporting financial entity so that its clients may receive more than \$100,000 of FDIC insurance.

In a third embodiment, a Customer financial entity which is a bank or savings institution may wish to retain all Client funds on its own books so that they may be available for its

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normal financial activities. This is accommodated by having the Agent managed MMDA-DDA pair (or pairs) be held at the Customer financial entity. Otherwise, the Agent systems and methods are as described above. In this embodiment, Client insurance is limited to \$100,000. In such an embodiment, the ownership interests managed by the Agent and recorded on its database may be advantageously realized as separate Client accounts at the Customer financial entity (referred to as a "return sweep account"). Then, a Client will have two accounts, one on the books of the Customer financial entity, for example, a Client demand deposit account, and a second account held on the books of the Agent, a return sweep account. The Agent then manages fund exchanges between these accounts so that the funds of all Client return sweep accounts are held in the managed MMDA-DDA pairs.

Such additional embodiments preferably also include flexible allocation of interest earned on the one or more Agent-managed MMDAs according to the characteristics of Client accounts (or according to Customer indications). As described above, the Supporting financial entities credit interest earned to the MMDAs, and the Agent then allocates the credited interest among the Client ownership interests according to Client account characteristics. This allocation is preferably according to interest rates varying according to account balances as determined by a set of tiers, each tier specifying a selected interest rate for a selected range of account balances. However, interest may also be allocated according to other Client of Customer financial entity characteristics, such as the existence of an interest rate promotion.

Systems supporting these embodiments may be separate; one system supporting one embodiment for one client. Or one system may support multiple Customer financial entities using a single embodiment. Advantageously, a single networked system processes multiple Customer financial entities using multiple embodiments. In the latter case, client and Customer financial entity records will contain sufficient information to identify clients related to each Customer financial entity, and further to provide client classification information appropriate to that Customer financial entity (ex., total balance at the Customer financial entity, branch, Customer financial entity history, . . . , etc.)

Thus, it can be appreciated that by practicing the embodiment of the invention described in connection with the above figures, an individual Client is effectively provided with FDIC insurance in excess of \$100,000 in an account from which unlimited withdrawals are possible. Further, the Customer financial entity holding the Client's base account is enabled to provide interest return flexibly allocated according to various Client characteristics, such as the size the Client balances.

Further embodiments will be apparent to those of skill in the art and are part of the present invention. In particular, elements of the methods and systems described above may be arranged and combined in further embodiments to achieve the objects of the invention in a manner tailored for particular Customer financial entities, or Clients, or Supporting institutions. Such additional combinations are also part of the present invention.

The invention described and claimed herein is not to be limited in scope by the preferred embodiments herein disclosed, since these embodiments are intended as illustrations of several aspects of the invention. Any equivalent embodiments are intended to be within the scope of this invention. Indeed, various modifications of the invention in addition to those shown and described herein will become apparent to

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those skilled in the art from the foregoing description. Such modifications are also intended to fall within the scope of the appended claims.

A number of references are cited herein, the entire disclosures of which are incorporated herein, in their entirety, by reference for all purposes. Further, none of these references, regardless of how characterized above, is admitted as prior to the invention of the subject matter claimed herein.

The invention claimed is:

1. A method for managing funds of a plurality of respective client accounts associated with a plurality of respective clients participating in a program, comprising:

maintaining a plurality of FDIC-insured and interest-bearing aggregated deposit accounts, each of the aggregated deposit accounts being interest-bearing, with one or more of the aggregated deposit accounts held in each different one of a plurality of financial institutions in the program;

maintaining funds of a plurality of the clients in the plurality of aggregated deposit accounts so that each aggregated deposit account holds funds of a plurality of the clients, with each client account in a subset of the plurality of client accounts having funds in their respective client account over a predetermined amount, with each of the respective client accounts in the subset having funds deposited in a plurality of the aggregated deposit accounts;

maintaining or having maintained or accessing by computer an electronic database, on one or more computer-readable media, comprising a respective balance of funds for each of a plurality of the respective client accounts in the subset and information on funds held by each of the plurality of clients of the subset in the plurality of aggregated deposit accounts;

receiving electronic client transaction data describing debit and/or credit transactions made by a plurality of clients against their respective client accounts;

updating the respective balance of funds in the database associated with each of the respective client accounts in the subset based on one or more debit and/or credit transactions made by the respective client;

determining electronically for each of the plurality of the client accounts in the subset of client accounts a respective interest rate from among a plurality of interest rates in an interest-allocation procedure based at least in part on the updated balance of funds associated with the respective client account in the subset;

calculating electronically a respective interest for a period to be posted to each of a plurality of respective client accounts in the subset, with the respective interest to be posted to a respective client account determined based on the respective interest rate determined for that respective client account in the subset, with the calculating being independent from the respective client account pro rata share in earnings posted to the plurality of the aggregated deposit accounts holding funds of the respective client account;

determining interest earned during the period by each of the plurality of aggregated deposit accounts in the program; and

posting electronically the respective interest calculated for each of the plurality of respective client accounts based on the respective interest rate determined for the respective client account.

2. The method as defined in claim 1, wherein there are a plurality of different customer financial entities, each differ-

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ent customer financial entity having a plurality of customer accounts associated therewith, and further comprising:

determining the interest-allocation procedure for each of a plurality of respective client accounts based at least in part on the customer financial entity associated with the respective client account.

3. The method as defined in claim 1, wherein the respective interest rate is determined based on the respective balance of funds associated with the client in the respective client account.

4. The method as defined in claim 1, wherein the respective interest rate is determined based on respective total client funds associated with a customer financial entity.

5. The method of claim 1, wherein the interest-allocation procedure comprises assigning an interest rate from among a plurality of interest rates to a respective client account based on whether the respective balance of funds of the client is in a selected range of balances.

6. The method of claim 1, wherein the determining the interest rate step is performed independently of the determining the interest earned step.

7. The method of claim 1, wherein one or more of the clients are associated with at least one customer financial entity, wherein the steps of the method are performed by one or more computers operated on behalf of an agent entity managing the client accounts on behalf of the customer financial entity, and wherein the interest-allocation procedure is determined at least in part based on a parameter related to the customer financial entity.

8. The method of claim 7, wherein the parameter related to the customer financial entity is a total of all of the balances of the client accounts managed by the agent for the customer financial entity.

9. The method of claim 1, further comprising:

requesting from the customer financial entity a transfer of any deficit caused by an allocation to one or more of the client accounts associated with that customer financial entity of more than the funds of those client accounts earned in the one or more aggregated deposit accounts.

10. The method of claim 1, wherein each of a plurality of the managed client accounts are associated with a different customer financial entity.

11. The method of claim 1, wherein one or more of the clients are associated with at least one customer financial entity, wherein the steps of the method are performed by an agent entity managing the client accounts on behalf of the at least one customer financial entity, and further comprising receiving an interest-allocation procedure from the customer financial entity.

12. The method of claim 1, wherein each of a plurality of the aggregated deposit accounts has a corresponding aggregated demand account in the financial institution holding the aggregated deposit account, and further comprising:

generating instructions for transferring funds between the aggregated deposit account and the aggregated demand account at one or more of the financial institutions to satisfy a net of transaction credits and debits from a plurality of the clients.

13. The method of claim 1, further comprising:

updating electronically a database with information representing

(i) the received client transaction data,

(ii) client-account data for a client account describing in which one or more aggregated deposit accounts the account funds are held, net client-account credits and/or debits, and interest allocated to the managed client account, and

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(iii) aggregated deposit accounts including net deposit-account credits and/or debits.

14. The method of claim 1, wherein one or more of the clients are associated with at least one customer financial entity, wherein one or more of the steps of the method are performed by one or more computers operated on behalf of an agent entity managing the client accounts on behalf of the at least one customer financial entity, and further comprising:

determining or having determined electronically from the electronic client transaction data a net credit or a net debit to be applied to one of the aggregated deposit accounts or distributed among a plurality of the aggregated deposit accounts;

generating instructions by the agent entity for one or more funds transfers with one or more of the aggregated deposit accounts to satisfy the determined net credit or net debit; and

transferring or having transferred funds with one or more of the aggregated deposit accounts to satisfy the determined net credit or net debit.

15. A method for managing funds of a plurality of respective client accounts associated with a plurality of respective clients participating in a program, comprising:

maintaining a plurality of FDIC-insured and interest-bearing aggregated deposit accounts, each of the aggregated deposit accounts being interest-bearing, with one or more of the aggregated deposit accounts held in each different one of a plurality of financial institutions in the program;

maintaining funds of a plurality of the clients in the plurality of aggregated deposit accounts so that each aggregated deposit account holds funds of a plurality of the clients, with each client account in a subset of the plurality of client accounts having funds in their respective client account over a predetermined amount, with each of the respective client accounts in the subset having funds deposited in a plurality of the aggregated deposit accounts;

maintaining or having maintained or accessing by computer an electronic database, on one or more computer-readable media, comprising a respective balance of funds for each of a plurality of the respective client accounts in the subset and information on funds held by each of the plurality of clients of the subset in the plurality of aggregated deposit accounts;

receiving electronic client transaction data describing debit and/or credit transactions made by a plurality of clients against their respective client accounts;

determining or having determined or receiving electronically for each client account with transaction activity a net client-account credit or net client-account debit resulting from that client's one or more transactions received in the client transaction data;

updating a respective balance of funds associated with each of a plurality of the respective clients based on the respective net client-account credit or respective net client-account debit determined from the respective client's transactions;

determining electronically for each of the plurality of the client accounts in the subset of client accounts a respective interest rate from among a plurality of interest rates in an interest-allocation procedure based at least in part on the updated balance of funds associated with the respective client account in the subset;

calculating electronically a respective interest for a period to be posted to each of a plurality of respective client accounts in the subset, with the respective interest to be

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posted to a respective client account determined based on the respective interest rate determined for that respective client account in the subset, with the calculating being independent from the respective client account pro rata share in earnings posted to the plurality of the aggregated deposit accounts holding funds of the respective client account;

determining interest earned during the period by each of the plurality of aggregated deposit accounts in the program; and

posting electronically the respective interest calculated for each of the plurality of respective client accounts based on the respective interest rate determined for the respective client account.

16. The method of claim 15, wherein one or more of the clients are associated with at least one customer financial entity, wherein one or more of the steps of the method are performed by one or more computers operated on behalf of an agent entity managing the client accounts on behalf of the at least one customer financial entity, and further comprising:

determining or having determined electronically from the electronic client transaction data a net credit or a net debit to be applied to one of the aggregated deposit accounts or distributed among a plurality of the aggregated deposit accounts;

generating instructions by the agent entity for one or more funds transfers with one or more of the aggregated deposit accounts to satisfy the determined net credit or net debit; and

transferring or having transferred funds with one or more of the aggregated deposit accounts to satisfy the determined net credit or net debit.

17. A method for managing funds of a plurality of respective client accounts associated with a plurality of respective clients participating in a program, wherein there are one or more different customer financial entities, each of the one or more different customer financial entities having a plurality of the customer accounts associated therewith, comprising:

maintaining a plurality of FDIC-insured and interest-bearing aggregated deposit accounts, each of the aggregated deposit accounts having its own interest rate, with one or more of the aggregated deposit accounts held in each different one of a plurality of financial institutions in the program;

maintaining funds of a plurality of the clients in the plurality of aggregated deposit accounts so that each aggregated deposit account holds funds of a plurality of the clients, with each client account in a subset of the plurality of client accounts having funds in their respective client account over a predetermined amount, with each of the respective client accounts in the subset having funds deposited in a plurality of the aggregated deposit accounts;

maintaining or having maintained or accessing by computer an electronic database, on one or more computer-readable media comprising a balance of funds in each of a plurality of the respective client accounts in the subset and information on funds held by each of a plurality of clients in the subset in the plurality of aggregated deposit accounts;

receiving electronic client transaction data describing debit and/or credit transactions made by a plurality of clients against their respective client accounts;

determining or having determined electronically for each client account a net client-account credit or a net client-account debit resulting from that client's one or more transactions received in the client transaction data;

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generating a respective updated balance of funds associated with each of the respective client accounts in the subset based on the net client-account credit or net client-account debit determined from the respective client's one or more transactions; 5

determining or having determined electronically from the electronic client transaction data or the respective net client-account credits or net client-account debits a net credit or a net debit to be applied to one of the aggregated deposit accounts or distributed among a plurality of the aggregated deposit accounts; 10

generating instructions for transferring funds with one or more of the aggregated deposit accounts at the one or more financial institutions to satisfy the net credit or debit for the plurality of client accounts; 15

determining an interest-allocation procedure for each of a plurality of respective client accounts based at least in part on the customer financial entity associated with the respective client account;

determining electronically for each of the plurality of the respective client accounts in the subset of client accounts a respective interest rate from among a plurality of interest rates in the determined interest-allocation procedure based on the updated balance of funds associated with the respective client; 25

calculating a respective interest for a period to be posted to each of a plurality of the respective client accounts in the subset, with the respective interest to be posted to the respective client account determined based on the respective interest rate determined for that respective client account in the subset, with the calculating being independent from the respective client account pro rata share of earnings posted to the plurality of the aggregated deposit accounts holding funds of the respective client account; 35

determining interest earned during the period by each of the plurality of aggregated deposit accounts in the program; and

posting electronically the respective interest calculated for each of the plurality of respective client accounts based on the respective interest rate determined for the respective client account. 40

18. A method for managing funds of a plurality of respective client accounts associated with a plurality of respective clients participating in a program, wherein there are a plurality of different customer financial entities, each different customer financial entities having a plurality of the customer accounts associated therewith, comprising:

maintaining a plurality of FDIC-insured and interest-bearing aggregated deposit accounts, each of the aggregated deposit accounts being interest-bearing, with one or more of the aggregated deposit accounts held in each different one of a plurality of financial institutions in the program; 50

maintaining funds of a plurality of the clients in the plurality of aggregated deposit accounts so that each aggregated deposit account holds funds of a plurality of the clients, with each client account in a subset of the plurality of client accounts having funds in their respective client account over a predetermined amount, with each of the respective client accounts in the subset having funds deposited in a plurality of the aggregated deposit accounts; 60

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maintaining or having maintained or accessing by computer an electronic database, on one or more computer-readable media, comprising a balance of funds in each of a plurality of the respective client accounts in the subset and information on funds held by each of a plurality of clients in the subset in the plurality of aggregated deposit accounts;

receiving electronic client transaction data describing debit and/or credit transactions made by a plurality of clients against their respective client accounts;

determining or having determined electronically for each client account a net client-account credit or a net client-account debit resulting from that client's one or more transactions received in the client transaction data;

generating a respective updated balance of funds associated with the respective client accounts in the subset based on the net client-account credit or net client-account debit determined from the respective client's transactions;

determining or having determined electronically from the electronic client transaction data or the respective net client-account credits or net client-account debits a net credit or a net debit to be applied to one of the aggregated deposit accounts or distributed among a plurality of the aggregated deposit accounts;

generating instructions for transferring funds with one or more of the aggregated deposit accounts at the one or more financial institutions to satisfy the net credit or debit for the plurality of client accounts;

transferring or having transferred funds with one or more of the aggregated deposit accounts to satisfy the net credit or net debit for the plurality of client accounts;

determining an interest-allocation procedure for each of a plurality of respective client accounts based at least in part on the customer financial entity associated with the respective client account;

determining electronically for each of the plurality of the client accounts in the subset of client accounts a respective interest rate from among a plurality of interest rates in the determined interest-allocation procedure based on the updated balance of funds associated with the respective client;

calculating a respective interest for a period to be posted to each of a plurality of the respective client accounts in the subset, with the respective interest to be posted to the respective client account determined based on the respective interest rate determined for that respective client account in the subset, with the calculating being independent from the respective client account pro rata share of earnings posted to the plurality of the aggregated deposit accounts holding funds of the respective client account;

determining interest earned during the period by each of the plurality of aggregated deposit accounts in the program; and

posting electronically the respective interest calculated for each of the plurality of respective client accounts based on the respective interest rate determined for the respective client account.

\* \* \* \* \*

UNITED STATES PATENT AND TRADEMARK OFFICE  
**CERTIFICATE OF CORRECTION**

PATENT NO. : 7,509,286 B1  
APPLICATION NO. : 10/411650  
DATED : March 24, 2009  
INVENTOR(S) : Bruce Bent and Bruce Bent, II

Page 1 of 1

It is certified that error appears in the above-identified patent and that said Letters Patent is hereby corrected as shown below:

**ON THE TITLE PAGE:**

(60) Provisional Application No.: Delete "60/372,374, filed on April 12, 2002" and replace it with --60/372,347, filed April 12, 2002--.

(57) ABSTRACT: Line 8, delete "of" and replace it with --or--.

**IN THE SPECIFICATION:**

Col. 1, line 18, delete "60/372,374" and replace it with --60/372,347--.

Col. 7, line 18, delete "earn" and replace it with --earning--.


**IN THE CLAIMS:**

Claim 10, Col. 28, line 41, delete "managed".

Claim 17, Col. 30, line 56, after "media" insert --,--.

Signed and Sealed this

Twenty-first Day of April, 2009



JOHN DOLL  
*Acting Director of the United States Patent and Trademark Office*

# EXHIBIT B



US007519551B2

(12) **United States Patent**  
**Bent et al.**

(10) **Patent No.:** **US 7,519,551 B2**  
(45) **Date of Patent:** **\*Apr. 14, 2009**

(54) **SYSTEMS AND METHODS FOR  
ADMINISTERING RETURN SWEEP  
ACCOUNTS**

(75) **Inventors:** **Bruce Bent, Manhasset, NY (US);  
Bruce Bent, II, New York, NY (US)**

(73) **Assignee:** **Island Intellectual Property LLC, New  
York, NY (US)**

(\*) **Notice:** **Subject to any disclaimer, the term of this  
patent is extended or adjusted under 35  
U.S.C. 154(b) by 785 days.**

**This patent is subject to a terminal dis-  
claimer.**

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filed on Oct. 21, 1998, now Pat. No. 6,374,231, and a  
continuation-in-part of application No. 09/677,535,  
filed on Oct. 2, 2000.**

(51) **Int. Cl.**  
**G06Q 40/00 (2006.01)**

(52) **U.S. Cl.** ..... **705/35; 707/1**

(58) **Field of Classification Search** ..... **705/30,  
705/35, 38-40, 42; 707/1, 10, 100-104;  
902/24, 41**

**See application file for complete search history.**

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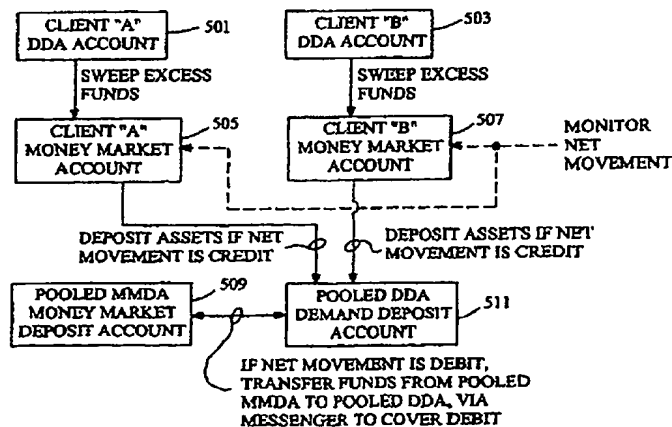
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**Primary Examiner—Mary Cheung**  
(74) **Attorney, Agent, or Firm—Foley & Lardner LLP**

(57) **ABSTRACT**

Novel systems and methods for managing a plurality of client demand accounts so as to allow a banking institution to retain client deposits on the bank's balance sheets while, at the same time, providing the client with the capability of implementing up to an unlimited number of transactions per month and also providing the client with interest on their account balances. These objectives are achieved through the use of a pooled deposit account at the client's savings institution or bank. Funds are transferred from individual client demand accounts to the pooled insured deposit account. All or a portion of the interest accrued from the pooled deposit account is then distributed to individual clients. The interest may, but need not, be distributed according to the relative proportions of each client's funds in the pooled deposit account. A database keeps track of deposits to, and withdrawals from, each of the client demand accounts, as well as each client's proportionate and/or monetary share in the pooled deposit account. On a regular, periodic, or recurring basis, a net transaction is calculated as the sum of individual client deposits and withdrawals from the plurality of demand accounts. The net transaction calculation is used to determine an amount of funds that need to be deposited into the pooled deposit account to cover client deposits, or an amount of funds that needs to be withdrawn from the pooled deposit account to cover client withdrawals. Individual account management calculations are performed to determine whether to deposit or withdraw funds from the pooled deposit account to each of a plurality of individual client demand accounts. The database is updated for each client's deposit and withdrawal activities. The invention permits funds to be deposited into a demand account from various sources, and also provides for the tendering of payments from the demand account via different instruments, without limitation as to the number of transfers, and with accrual of interest on the deposited funds.

**51 Claims, 6 Drawing Sheets**





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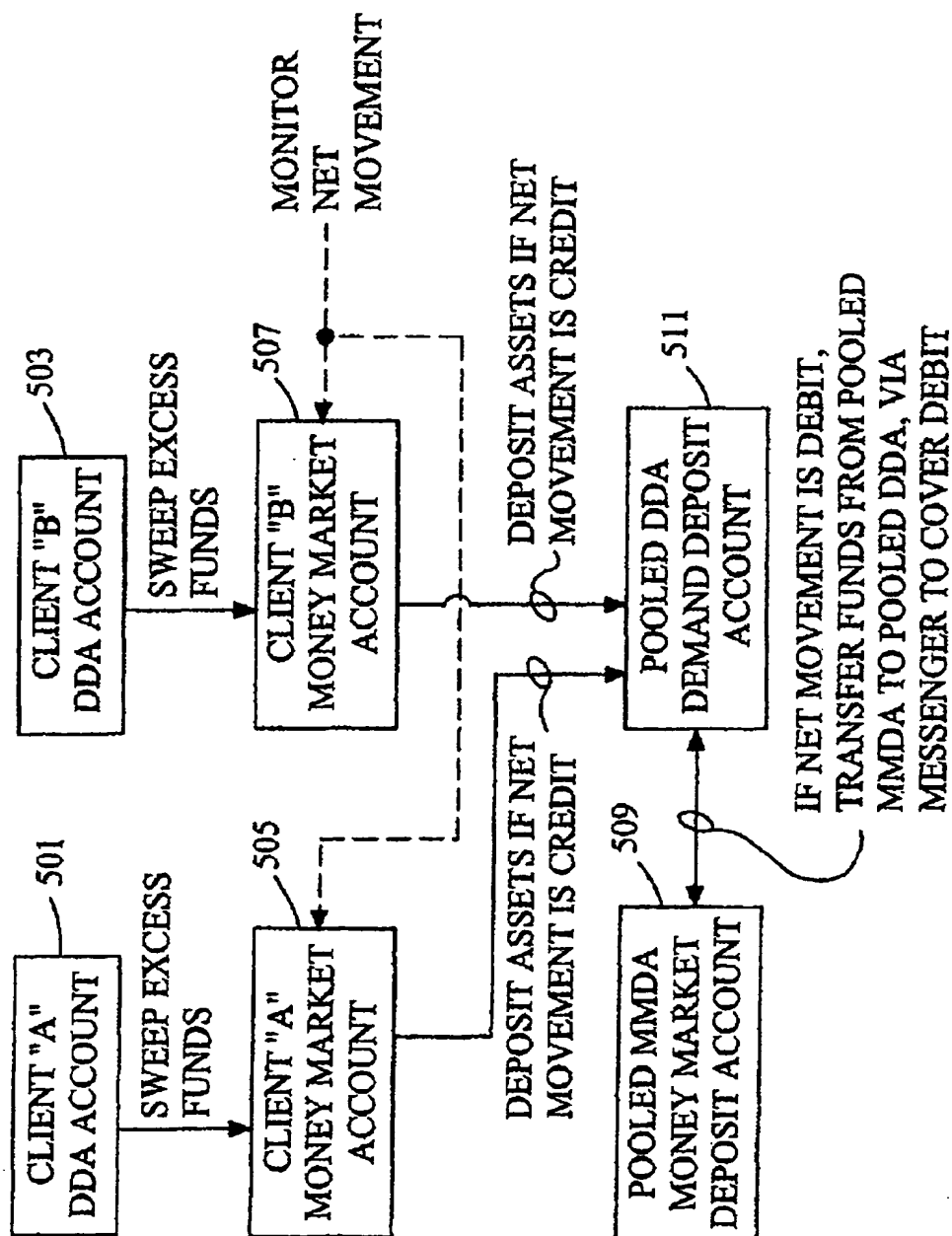


FIG. 1

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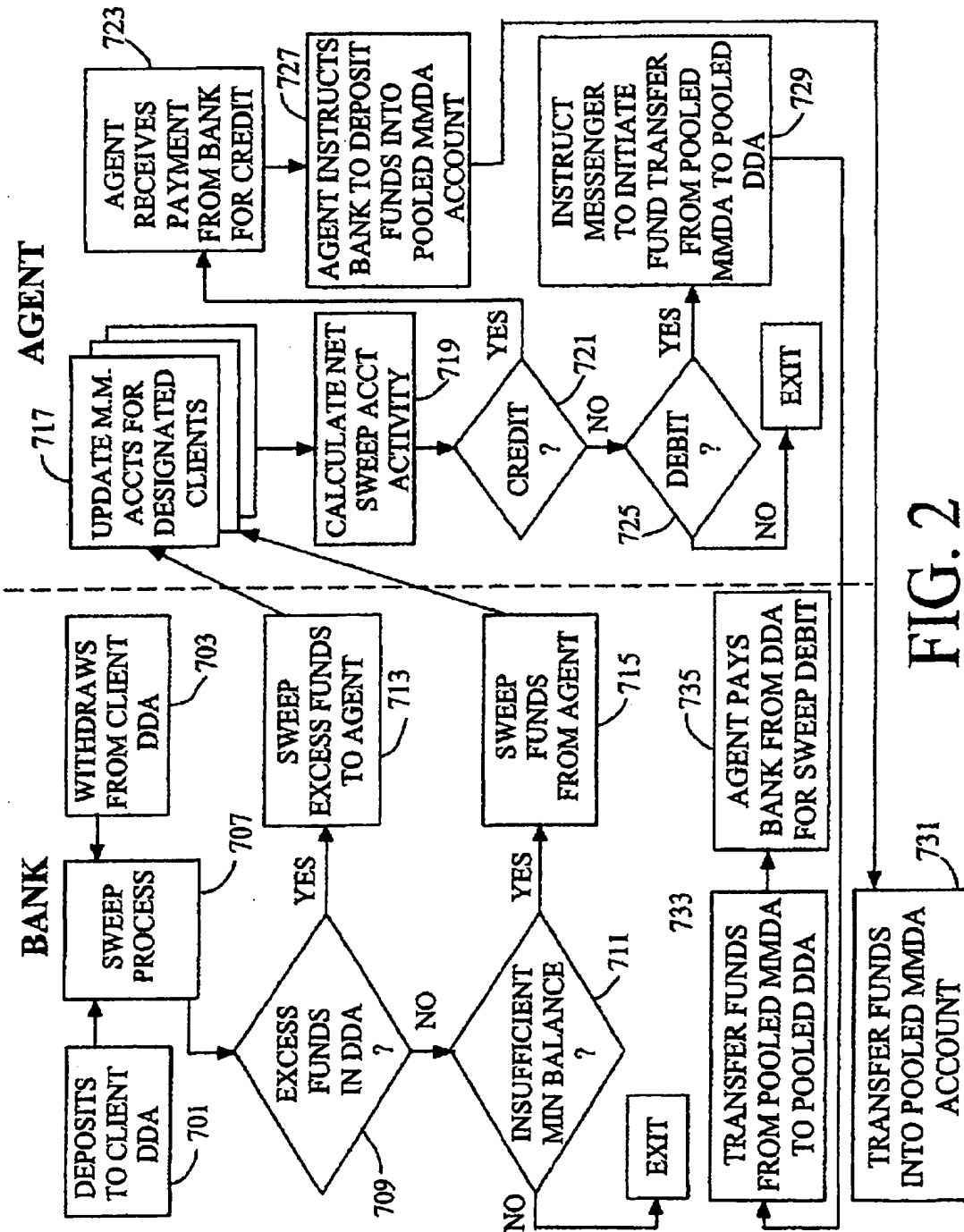


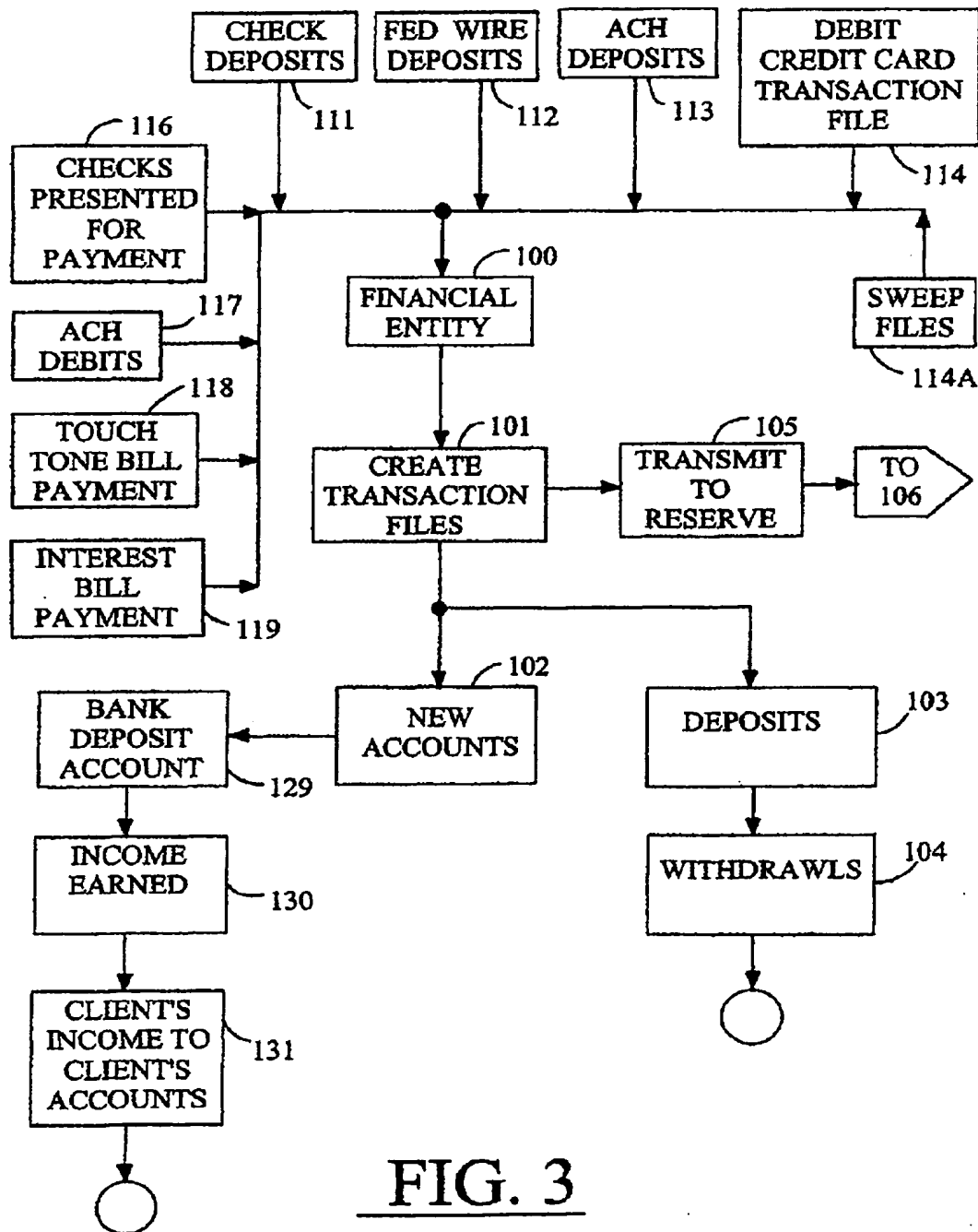
FIG. 2

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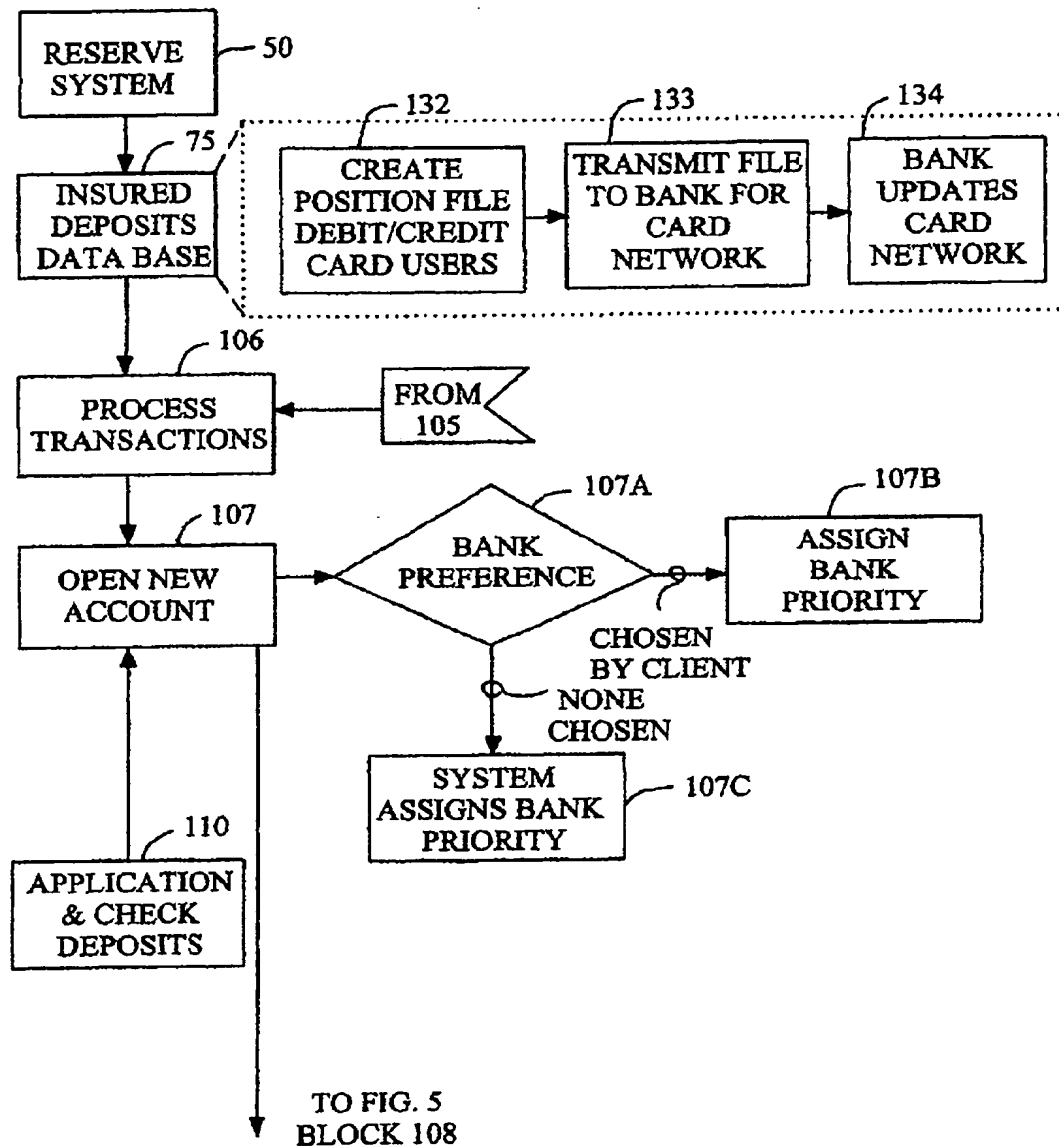


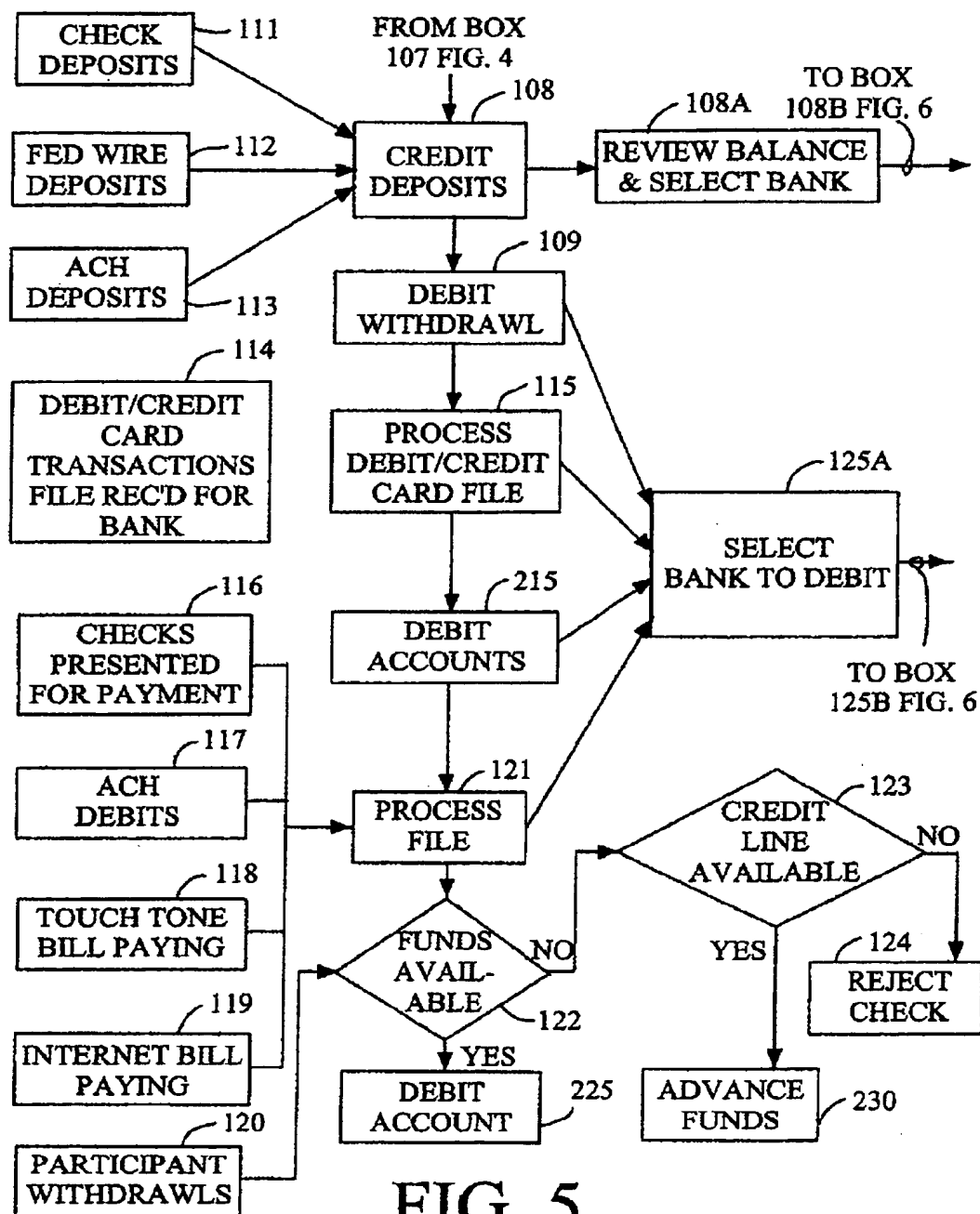
FIG. 4

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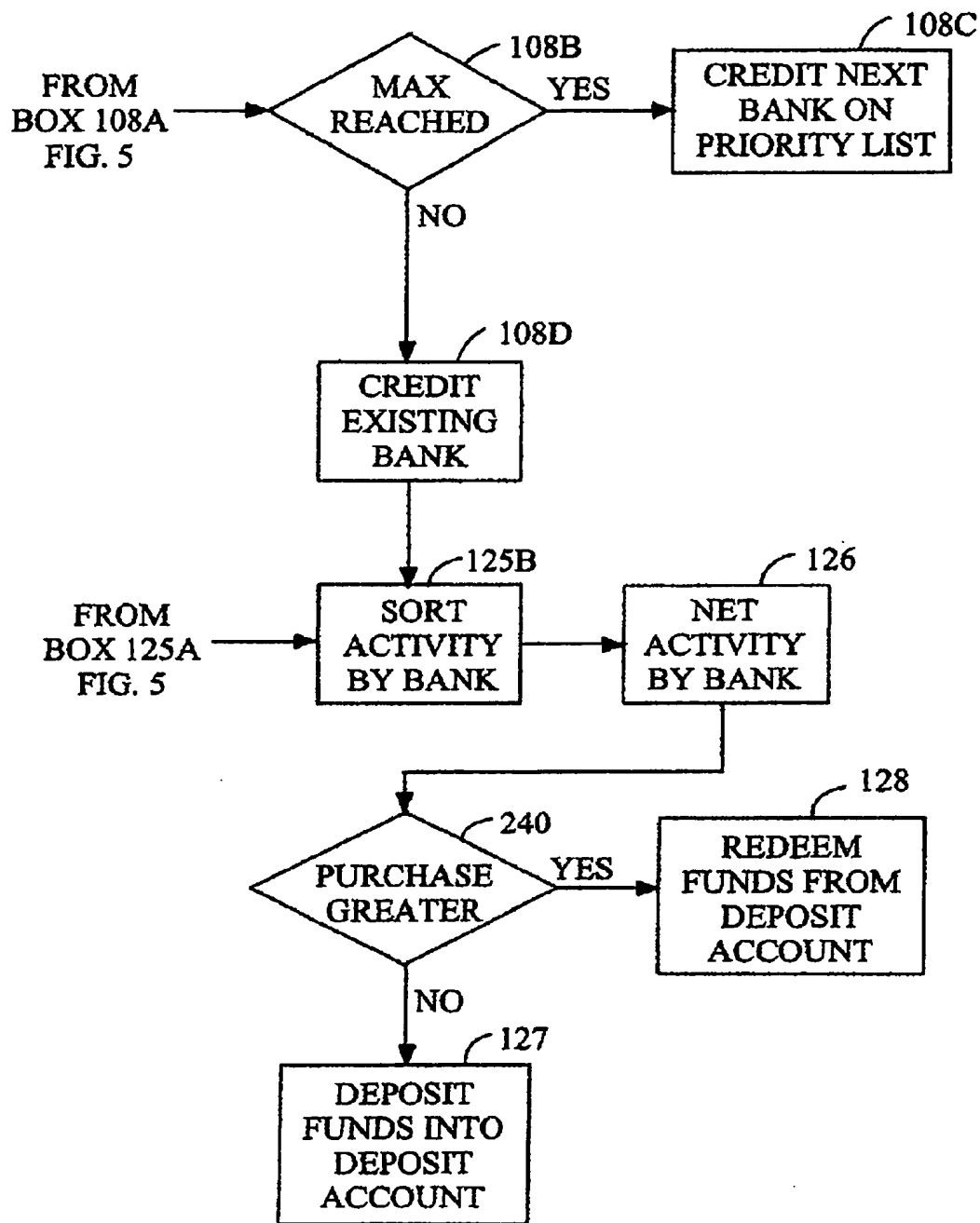


FIG. 6

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# SYSTEMS AND METHODS FOR ADMINISTERING RETURN SWEEP ACCOUNTS

## RELATED CASES

This is a Continuation-in-Part of patent application Ser. No. 09/176,340, filed on Oct. 21, 1998 now U.S. Pat. No. 6,374,231, and patent application Ser. No. 09/677,535, filed on Oct. 2, 2000, the disclosures of which are both incorporated by reference herein.

## BACKGROUND OF THE INVENTION

### 1. Field of the Invention

The invention relates generally to computerized banking techniques and, more specifically, to techniques by which deposits are kept on a bank's balance sheet while being administered as sweep account funds by a third party.

### 2. Background Art

It would be desirable if investors could obtain fully-insured, interest-bearing bank accounts that offer an unlimited number of fund transfers per month. However, present statutory restrictions prevent banks and savings institutions from paying interest on certain types of deposit accounts. More specifically, Title 12, Part 329, of the Code of Federal Regulations (CFR) provides that "no bank shall, directly or indirectly, by any device whatsoever, pay interest on any demand deposit". (12 CFR 329.2). A "deposit" is any money placed into a checking account, savings account, Certificate of Deposit (CD), or the like. In a "demand" account, the owner can demand that funds be drawn and paid to another account (having the same or a different owner), or to a third party. These demand payments are typically implemented via bank drafts, checks, credit cards, and debit cards.

Not all bank accounts are considered to be demand accounts. If all, or a fixed amount, of the principal must be maintained in order to achieve the particular benefits afforded by that account, then the account is not a "demand" account. According to the CFR, a "demand deposit" includes any deposit for which the depositor is authorized to make more than six fund "transfers" during any month or statement cycle of at least four weeks. Not all fund transfers will be counted towards the allotted maximum of six; rather, it is necessary to examine the specific type of fund transfer under consideration. A deposit will be considered a "demand" deposit if the transfer takes place by means of a preauthorized, automatic, or telephonic order specifying the transfer of funds to another account of the depositor at the same bank, to the bank itself, or to a third party. Likewise, a deposit is a "demand" deposit if more than three of the six transfers are authorized to be made by check, draft or debit card (12 CFR 329.1(b)(3)). On the other hand, an unlimited number of transfers is allowed between two accounts registered to the same person or entity, provided that the transfers are made by messenger, mail, telephone (but only via check mailed to the depositor), automated teller machine, or in person. Unless the funds of a deposit are held in a money market account (18 USC 1832 (a)), an account for which a depositor has the ability to make at least six transfers will be deemed a demand account, and no interest will be payable on the funds therein. Therefore, owners of demand accounts do not obtain interest on their funds.

One exemplary approach to offering investors fully-insured, interest-bearing accounts that provide up to an unlimited number of fund transfers was disclosed in U.S. patent application Ser. No. 09/176,340, referenced above. This application describes a system for managing a plurality of

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accounts for multiple clients. These accounts, which may originate from a variety of sources, banks, brokerage firms, and/or clients, are held at any of a plurality of savings institutions or banks. The system provides an aggregate insured money market deposit account at a bank or savings institution that is not necessarily an institution at which any of the client accounts are held. The aggregate insured deposit account is linked to each of the demand accounts in a manner so as to permit deposit funds to be placed into a demand account from various sources, and also so as to provide for the tendering of payments from the demand account via different instruments, without limitation as to the number of transfers. Interest is earned on deposits because funds are transferred from individual client accounts to the managed aggregate insured deposit account.

While a substantial advance over other prior art systems, the above noted system requires the transfer of oftentimes significant funds to comply with various banking regulations. This may be difficult in the case of smaller, community-based banks, as these institutions depend upon such funds as a source for loans. Moreover, some bank clients are not comfortable with arrangements that transfer client funds to unfamiliar third parties.

Pursuant to Regulation Q, banks are prohibited from paying interest on commercial accounts. However, banks have developed several approaches in an effort to compete with brokers who offer interest on cash balances for their commercial customers. These approaches, which include money fund sweeps and repo sweeps, are disadvantageous in that they involve a removal of commercial customer deposits from the bank's balance sheets.

A substantial market exists for an interest-bearing return sweep account that can be readily integrated into the existing infrastructure of a bank or savings institution, while, at the same time, permitting account funds to remain on the bank's balance sheet, with minimal disruption of existing bank-client relationships. It was with the foregoing realizations in mind that the present invention was developed.

## OBJECTS AND SUMMARY OF THE INVENTION

It is an object of the invention to provide bank and/or savings institution clients with the ability to implement up to an unlimited number of transfers while, at the same time, permitting the bank and/or savings institution to retain client-deposited funds.

It is another object of the invention to provide bank and/or savings institution clients with interest from funds on deposit while simultaneously providing the ability to implement up to an unlimited number of transfers.

It is a further object of the invention to permit the bank and/or savings institution to retain client-deposited funds on its books so that these funds can be used as a source for loans.

It is yet a further object of the invention to provide a banking method that enables clients to deposit funds into an account from any of various sources, and to make payments from the account via any of various instruments, without limitation as to the number of transfers, while still earning interest on the funds in the account.

It is another object of the present invention to provide a banking method that manages a plurality of demand accounts for multiple clients whose funds are held in an aggregate insured deposit account at the client's banking institution but managed by a third party agent.

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It is another object of the invention to provide a money market banking method that has a minimal impact on presently-existing, bank-to-client relationships.

It is a further object of the invention to provide a money market banking method which is readily integrable into the existing infrastructure of a bank or savings institution.

These and other objects of the invention are realized in the form of novel systems and methods for managing a plurality of client demand accounts so as to allow a banking institution to retain client deposits on the bank's balance sheets while at the same time, providing the client with the capability of implementing up to an unlimited number of transactions per month and also providing the client with interest on their account balance. These objectives are achieved through the use of an aggregate money market deposit account and an aggregate demand deposit account. These accounts are held on the books of the client's savings institution or bank, but are managed by a third party agent for the client. In response to client deposits and withdrawals, the agent initiates a transfer of funds between the aggregate demand deposit account and the aggregate money market deposit account. If client deposits exceed client withdrawals, then all or some of the funds in the aggregate demand deposit account may be transferred to the aggregate money market deposit account. On the other hand, if client withdrawals exceed client deposits, then all or some of the funds in the aggregate money market deposit account are transferred to the aggregate demand deposit account. The aggregate money market deposit account is an interest-bearing deposit account, where the aggregate balances for all clients are deposited.

One purpose of the aggregate demand deposit account is to facilitate the movement of funds. On a regular, periodic, or recurring basis, the agent calculates a net transaction as the sum of individual client deposits and withdrawals from the plurality of individual client demand accounts. The net transaction calculation is used to determine an amount of funds that need to be deposited into the aggregate money market deposit account to cover client deposits, or an amount of funds that needs to be withdrawn from the aggregate money market deposit account to cover client withdrawals. Individual account management calculations are performed to determine whether to deposit or withdraw funds from the aggregate demand deposit account to each of a plurality of individual client return sweep and/or money market accounts. The agent updates its database for each client's deposit and withdrawal activities.

The individual client has two accounts, a client demand deposit account on the bank's books, and a return sweep account or money market account on the agent's books. Individual transactions for the client occur between these two client accounts.

The agent distributes all or a portion of the interest accrued from the aggregate deposit account to individual clients. The interest is distributed according to the relative proportions of each client's funds in the aggregate deposit account. The agent maintains a database that keeps track of deposits to, and withdrawals from, each of the client demand accounts, as well as each client's proportionate and/or monetary share in the aggregate money market deposit account.

The invention permits funds to be deposited into a demand account from various sources, and also provides for the tendering of payments from the demand account via different instruments, without limitation as to the number of transfers, and with accrual of interest on the deposited funds. Moreover, the deposited funds are retained at the client's bank or savings institution. Optionally, the debiting of funds from each of the

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client accounts is monitored, and debits are selectively authorized or rejected based upon the client's account balance and/or their current share in the aggregate deposit account.

#### BRIEF DESCRIPTION OF THE DRAWINGS

The following is a brief description of the drawings, in which:

FIG. 1 is an information flow diagram showing the transfer of client funds among a plurality of accounts pursuant to the techniques of the present invention;

FIG. 2 is a flowchart showing an illustrative operational sequence for implementing the techniques of the present invention; and

FIGS. 3-6 together comprise a flowchart depicting processing steps to be performed on behalf of an administrator pursuant to a further embodiment of the present invention.

#### DETAILED DESCRIPTION OF THE PREFERRED EMBODIMENTS

Refer now to FIG. 1, which is a flow diagram showing the transfer of client funds among a plurality of accounts pursuant to the techniques of the present invention. A plurality of client demand accounts, including Client "A" DDA (Demand Deposit Account) 501 and Client "B" DDA Account 503 are managed through the use of an insured pooled deposit account at the client's savings institution or bank. In FIG. 1, this pooled deposit account is provided in the form of a Pooled MMDA (Money Market Deposit Account) 509. Excess funds are swept from client DDA accounts (Client "A" DDA 501 and Client "B" DDA 503, respectively) to corresponding client Money Market Accounts (Client "A" Money Market Account 505 and Client "B" Money Market Account 507, respectively). Excess funds may be calculated in terms of a desired or target minimum balance for each of the client DDA accounts. The same target minimum balance could be applied to all DDA accounts, or an account-specific target balance could be assigned to a certain account based upon the past history and/or the expected usage of that account. Alternatively, all funds could be swept from the client DDA accounts to the Money Market Accounts. After recording the amount of funds swept into a client Money Market Account, the funds are then transferred to the Pooled MMDA Account 509.

The net result of the aforementioned fund transfer activity is that funds are effectively transferred from individual client demand accounts, including Client "A" DDA 501 and Client "B" DDA 503, to a pooled insured deposit account (Pooled MMDA Account 509) at the client's bank or savings institution. This is advantageous in that the Pooled MMDA account 509 is an interest-bearing "non-demand" account pursuant to 12 CFR 329.2 et seq. Moreover, the Pooled MMDA Account is eligible for full FDIC insurance protection. This protection covers each client whose deposits are placed into the pooled account, up to a maximum of \$100,000 per client. As the Pooled MMDA Account 509 accrues interest, all or a portion of this interest is distributed to individual clients. The interest may, but need not, be distributed according to the relative proportions of each client's funds in the Pooled MMDA Account 509.

A database keeps track of deposits to, and withdrawals from, each of the client demand accounts (Client "A" DDA Account 501 and Client "B" DDA Account 503), as well as each client's proportionate and/or monetary share in the Pooled MMDA Account 509. On a regular, periodic, or recurring basis, a net transaction is calculated as the sum of indi-

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vidual client deposits and withdrawals from the plurality of demand accounts. The net transaction calculation is used to determine an amount of funds, if any, that needs to be deposited into the Pooled MMDA Account 509 from the individual client Money Market Accounts (Client "A" Money Market Account 505 and/or Client "B" Money Market Account 507) to cover client deposits. The net transaction calculation is also used to determine an amount, if any, of funds that need to be withdrawn from the Pooled MMDA Account 509 to cover client withdrawals from respective client DDA Accounts (Client "A" DDA Account 501 and/or Client "B" DDA Account 503). In the event that fund withdrawals are required, the necessary funds are first transferred from the Pooled MMDA Account 509 to a Pooled DDA (Demand Deposit Account) 511 which is held at the same savings institution or bank as Pooled MMDA Account 509. On an as-needed basis, funds are then transferred from the Pooled MMDA Account 509 to individual client DDA accounts (Client "A" DDA Account 501 or Client "B" DDA Account 503) to cover checks written by these clients, as well as any fund withdrawals or transfers that clients wish to implement on behalf of their respective DDA Accounts.

Individual account management calculations are performed to determine whether to deposit or withdraw funds from the Pooled DDA Account 511 to each of a plurality of individual client demand accounts. The database is updated for each client's deposit and withdrawal activities. The invention permits funds to be deposited into a client demand account from various sources, and also provides for the tendering of payments from the client demand account via different instruments, without limitation as to the number of transfers, and with accrual of interest on the deposited funds. Optionally, the debiting of funds from each of the client demand accounts is monitored, and debits are selectively authorized or rejected based upon the client's demand account balance and/or their current share in the pooled deposit account.

The foregoing procedures are structured in a manner so as to permit banks and savings institutions to continue servicing their clients as they have done in the past. Moreover, if desired, these procedures could be implemented by an agent acting on behalf of one or more clients. In this manner, the invention would be virtually transparent to presently-existing banks and savings institutions. Bank personnel would not be burdened with the requirement to perform unfamiliar and potentially time-consuming procedures. Pursuant to this "agency" approach, the agent effectively provides a "sweep interface" between a client's existing DDA account (i.e., Client "A" DDA Account 501) and a fully-insured, interest-bearing pooled account (i.e., the Pooled MMDA Account 509). The agent opens up the Pooled MMDA Account 509 and the Pooled DDA Account 511 at the client's bank or savings institution. The agent is responsible for several administrative activities, including: (1) recordkeeping in connection with the individual Client Money Market accounts (Client "A" Money Market Account 505 and Client "B" Money Market Account 507); (2) determining each client's proportionate share in the Pooled MMDA Account 509; (3) determining an appropriate balance for the Pooled DDA Account 511; and (4) determining appropriate transfers from the Pooled DDA Account 511 to any of the client DDA accounts.

Although banks and savings institutions can provide DDA, MMDA and checking account services to clients without utilizing a third-party agent, under the current statutory scheme, these institutions cannot pay interest on account balances, and at the same time, allow for an unlimited number

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of transactions. Pursuant to Regulation D, banks and savings institutions are prohibited from automatically allowing unlimited fund transfers between DDAs and MMDAs on behalf of clients. A client could open up his own DDA and MMDA accounts, evaluate daily DDA activities, determine if funds should be moved between the DDA and the MMDA, and instruct the bank to transfer the appropriate funds. However, it would be time consuming and inefficient. The use of an agent provides administrative expediency, rendering the entire operational scheme more attractive to the client as well as the banking institution.

Advantageously, the agent maintains the client's original DDA account number that uniquely identifies that client's account at his or her bank or savings institution. This account number is used as a cross-reference to keep track of each client's proportionate interest in the Pooled MMDA Account 509. The client Money Market Account numbers (for Client "A" Money Market Account 505 and Client "B" Money Market Account 506) are transparent to these clients, as is the account number for the Pooled MMDA Account 509.

Effectively, a "sweep interface" exists between each of respective individual client DDA Accounts (Client "A" DDA Account 501 and Client "B" DDA Account 503) and corresponding individual client Money Market Accounts (Client "A" Money Market Account 505 and Client "B" Money Market Account 507). Excess funds in the individual client DDA accounts are swept to the individual client Money Market accounts to be further credited to the Pooled MMDA Account 509. If funds are needed to pay for a check or handle a withdrawal, funds are redeemed via the Pooled DDA Account 511. The sweep interface may be governed by any of a number of established or specified parameters. For example, the bank may choose to leave a certain dollar amount in each of the client DDA accounts to cover checks and only sweep funds in excess of that amount. Or the bank may decide to sweep everything and redeem funds based upon the checks presented for payment. From the standpoint of the bank or savings institution, no additional work is required. The bank merely maintains the client's existing individual DDA account along with the client's profile (name, address, check reorders, signature on file, stop payment orders, etc). Bank clients will be able to keep their existing checks, and to continue using their existing DDA accounts. Deposits are credited to these DDA accounts and then swept to the pooled MMDA account. Many of the required administrative activities are performed by the agent on behalf of designated client accounts. These administrative activities basically involve the monitoring of fund sweeping to and from individual client DDA accounts and corresponding individual Money Market accounts, as well as transfers among the individual Money Market, Pooled MMDA and Pooled DDA Accounts maintained by the agent. On a daily, regular, repeated, or periodic basis, the bank or savings institution transmits a transaction sweep data file to the agent that includes deposit and withdrawal information for each of a plurality of clients. The bank and the agent periodically or repeatedly reconcile the sweep data file and agree upon a net settlement figure. If the net settlement figure is a credit, the bank or savings institution credits the Pooled DDA Account 511. During routine, day-to-day system operations, the only transactions that occur in the Pooled MMDA Account 509 are transfers either to or from the Pooled DDA Account. Pursuant to an optional alternative approach, the bank could allocate credits to the Pooled MMDA Account 509. In any event, if the net settlement figure is a debit, the bank or savings institution debits the Pooled DDA Account 511. The agent provides instructions by messenger to transfer funds from the Pooled MMDA Account 509

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to the Pooled DDA Account 511 to cover the debit balance in the account. At the end of a predetermined period of time (such as a month), the agent can provide a monthly statement file to the bank or savings institution. This file may include activity for a client's individual money market account as maintained in an agent database. The bank or savings institution can then use this monthly statement file to generate month end statements for its clients. According to one preferred embodiment of the invention, activity pertaining to other accounts is tracked and maintained by the bank or savings institution. However, pursuant to an alternate embodiment, this statement file could optionally include Pooled MMDA, Pooled DDA, individual Money Market, and/or individual DDA account activity.

Refer now to FIG. 2, which is a flowchart showing an illustrative operational sequence for implementing the techniques of the present invention. The procedure commences at block 701, where a client makes a deposit to their individual DDA Account (i.e., Client "A" DDA 501, FIG. 1), or at block 703, where a client makes a withdrawal from their individual DDA Account. Irrespective of whether the transaction is a withdrawal or a deposit, a sweep process is performed (block 707) to sweep any excess account funds out of the client's individual DDA account, or to sweep required funds into this DDA account. A test is performed at block 709 to ascertain whether or not there are excess funds in the individual client's DDA account. If so, program control jumps ahead to block 713, whereas if not, the program continues on to block 711. At block 713, the excess funds are swept to the agent, who then updates the individual client Money Market account (block 717).

The negative branch from block 709 leads to block 711, where a test is performed to ascertain whether or not there is an insufficient minimum balance in the individual client's DDA account. If not, the program exits. If so, program control advances to block 715 where funds are swept from the agent. The agent then updates the individual client Money Market account (block 717). Next, on a periodic, repeated, or scheduled basis, the agent calculates the net sweep account activity (block 719). A test is performed at block 721 to ascertain whether or not the net sweep activity is a credit. If so, program control advances to block 723 and, if not, program control continues to block 725. At block 723, the agent receives payment from the bank for the credit. Payment can be received, for example, in the form of a wire transfer or a credit to the pooled DDA account. Next, the agent instructs the bank to deposit the received funds into the pooled MMDA account (block 727). Funds are transferred into the pooled MMDA account (block 731), and the program exits.

The negative branch from block 721 leads to block 725 where a test is performed to ascertain whether or not the net sweep activity is a debit. If not, the program exits and, if so, the program continues to block 729. At block 729, a messenger is instructed to initiate a fund transfer from the pooled MMDA account to the pooled DDA account. The funds are transferred from the pooled MMDA to the pooled DDA (block 733), and the agent pays the bank or savings institution from the pooled DDA account for the sweep debit. The program then exits.

FIGS. 3 and 4 together comprise a flowchart depicting processing steps to be performed on behalf of an agent or administrator pursuant to a further embodiment of the present invention. This agent or administrator can be a brokerage firm, a bank, or another financial entity with which clients can institute financial transactions such as deposits, withdrawals and on-demand payments. The administrator or agent appears to each client as if it were, at least in part, a bank, by accepting

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deposits for the client's account, and, subsequently, by authorizing (and then implementing) payments demanded by the client from his or her account. The funds for all of the clients are pooled into a single deposit account that is maintained as an insured deposit account at a licensed bank or savings institution.

Referring to FIG. 3, financial entity 100 may be a bank, savings institution, brokerage firm, or other entity where financial transactions take place or can be facilitated. This financial entity 100 creates transaction files 101 which are transmitted to Reserve 105. Reserve 105 (or the Reserve System) is the administrator or other entity in charge of administering at least one of the deposit accounts. New account files 102 can be transmitted to Reserve 105. For example, a new investor account may need to be opened. This activity necessitates organizing and coordinating information to service a new investor for the present system, even though that investor may already be a client of a financial entity 100 for other investment vehicles. A new account 102 effectively becomes part of an existing pooled bank deposit account 129 that collects earned income 130, all or a portion of which is eventually conveyed to the client's accounts 131. Of course, at some point in time, the deposit account must first be established with clients' funds. The transaction files represent the addition of funds by check (to be drawn on another institution, or to be drawn from a different demand account at the same institution), wire or electronic transfer, ACH, credits (such as from a debit or credit card merchant), or a sweep from one of the client's other accounts. Accordingly, encompassed in the transaction file are deposits 103 and withdrawals 104. A "sweep" includes the automatic transfer of funds, such as the automated transfer of interest from one account into the client's account, as well as the automated transfer of funds out of the client's account (such as for payment of a securities trade); thus, a sweep may be from one of the client's accounts to another. The responsibility for maintaining the deposit account can be assigned by the administrator to a third party.

Referring now to FIG. 4, Reserve System 50 contains an insured deposit database 75 where a position file for debit/credit card users is created 132 and transmitted to a bank for a debit/credit card network 133 where the bank then updates the network 134. The system updates the data base 75 and processes transactions 106 (from 105, FIG. 3) and opens a new account 107 where application and check deposits are processed 110. The bank preference 107A is the list of banks and the order of preference for deposits and withdrawals held on the account, including a list of banks to be excluded (if any), and the maximum percentage and/or amount of funds to be held in each bank. The client's bank preference data is added to the account at 107B. If the client does not select values for any of these variables, the system can provide default values for the banks and their order at 107C sufficient for all of the client's funds. When possible, the system can be configured to assign a bank that is in the state in which the client resides. Referring to FIG. 5, it can be seen that when a deposit, either a check deposit 111, federal wire deposit 112, ACH deposit, sweep, or other deposit is credited to the client's account 108, the system will review where the existing funds of the accounts are deposited 108A. If the client's balance has reached the maximum allowable balance for the existing bank 108B, as shown in FIG. 6, the system will then select the next bank on the preference list attached to the account 108C. If the maximum allowable balance has not been reached in the existing bank, the system will credit the additional funds to that bank 108D.

Still referring to FIG. 5, the procedure for processing withdrawals can be seen. Various methods of withdrawing funds

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are debit withdrawal 109, processing debit or credit card transactions such as debit/credit card files 115, direct debit accounts 215, and processing of files 121. Processing of a debit/credit card file 115 utilizes data accumulated from debit/credit card transactions received from the banks 114. The processing of file 121 procedure utilizes one of various sources of data such as a check presented for payment 116, ACH debits 117, touch tone bill paying 118, and/or internet bill paying 119.

After processing the debit procedure, the system will review the bank preference list and select the appropriate bank to debit 125A. The system will sort all the daily transactions by the bank 125B (see FIG. 6). The activity for each bank will then be netted 126 and the appropriate deposit or withdrawals made.

The system will then determine whether funds are available 122, which function is also associated with other participant withdrawals 120. If the funds are available, the account is debited 225. If the funds are not available, however, the system determines whether a credit line is available 123. If a credit line is available, then funds are advanced 230 to cover the debit; if not the transaction is rejected 124.

Referring to FIG. 6, as previously stated, the system determines whether the client's balance reaches its maximum 108B. If so, the next bank on the list selected by the client is credited 108C. If the maximum is not reached, then the existing bank is credited 108D. Information and activities associated with processed debits and credits of the client's accounts from 125A are sorted by the bank 125B and the net activity by the bank is determined 126. The system then determines whether the deposits and credits were greater than the withdrawals and debits 240. If so, the excess funds are deposited into a deposit account 127. If the debits and withdrawals were greater than the credits, the difference is redeemed from the deposit account 128.

Thus, by practicing the embodiment of the invention described in connection with FIGS. 3-6, an individual client is effectively provided with FDIC insurance in excess of \$ 100,000. This result is brought about because the individual client's holdings are maintained in multiple insured deposit accounts, which may be in multiple banks.

The foregoing description is intended to be illustrative and not limiting. Any of various changes, modifications, and/or additions may become apparent to the skilled artisan upon a perusal of this specification, and, as such, are intended to be within the scope and spirit of the invention as defined by the claims.

What is claimed is:

1. A computer-implemented method for managing funds for a plurality of client accounts for a plurality of clients whose funds were accepted for deposit in respective client accounts held in the names of the respective clients at a first banking institution, the method comprising:

- (a) maintaining a plurality of FDIC-insured and interest-bearing aggregated deposit accounts, each aggregated deposit account held in a different respective bank of a different respective banking institution including an FDIC-insured and interest-bearing aggregated deposit account held at the first banking institution;
- (b) maintaining or having maintained an electronic database, on one or more computer-readable media, containing information on funds held by each client in the plurality of aggregated deposit accounts;
- (c) administering the aggregated deposit accounts to transfer or have transferred client funds that had been accepted into respective client accounts held in the names of the respective clients at the first banking institution

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tution to the aggregated deposit account at the first banking institution except that for clients with a balance of funds in the aggregated deposit account at the first banking institution that equal or exceed a specified amount depositing or having deposited additional funds of that client to one of the aggregated deposit accounts in a different one of the banking institutions;

(d) withdrawing or having withdrawn client funds from the FDIC-insured and interest-bearing aggregated deposit account held at one of the banks of one of the banking institutions more than six (6) times during a month while preserving an insured and interest-bearing status of the FDIC-insured and interest-bearing aggregated deposit account held at the one bank; and

(e) updating or having updated the electronic database based on the transfers to and withdrawals in the plurality of aggregated deposit accounts.

2. The method of claim 1, wherein the withdrawing or having withdrawn step is made from an aggregated deposit account at one of the banking institutions through an aggregated demand deposit account at that banking institution.

3. The method of claim 2, further comprising selecting the different one of the banking institutions to deposit the additional funds to the aggregated deposit account held thereby based at least on one or more exclusions of banking institutions made by the client.

4. The method of claim 1, further including the step of, on a regular, periodic, or recurring basis, calculating a net transaction as the sum of individual client deposits and withdrawals from each of the plurality of the client accounts; and, further including the step of utilizing the net transaction calculation to determine an amount of funds that need to be deposited into one or more of the aggregated deposit accounts to cover client deposits, or an amount of funds that needs to be withdrawn from one or more of the aggregated deposit accounts to cover client withdrawals.

5. The method of claim 1, further including the steps of: (a) monitoring requested debits of funds from each of the client accounts, and (b) selectively authorizing or rejecting each of the requested debits based upon an account balance in a client account or a client's proportionate share in the plurality of aggregated deposit accounts or based upon both the account balance in the client account and the client's proportionate share in the plurality of aggregated deposit accounts.

6. The method of claim 1, wherein the withdrawing or having withdrawn step is substantially performed only by one or more of the following methods: in person, or by mail, or by messenger, or by telephone and distributed by mail, or by automated teller machine, or a combination thereof so that the insured and interest-bearing status of the aggregated deposit accounts is preserved.

7. The method of claim 1, further comprising selecting the different one of the banking institutions to deposit the additional funds to the aggregated deposit account held thereby based at least on one or more exclusions of banking institutions made by the client.

8. The method of claim 1, further comprising selecting the different one of the banking institutions to deposit the excess over the specified amount to the aggregated deposit account held thereby based on an exclusion of banking institutions located in a state where the client resides.

9. The method of claim 1, withdrawing or having withdrawn client funds from the FDIC-insured and interest-bearing aggregated deposit account held at a second one of the banks of a second one of the banking institutions more than six (6) times during a month while preserving an insured and

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interest-bearing status of the FDIC-insured and interest-bearing aggregated deposit account held at the second one of the banks.

10. The method of claim 1, withdrawing or having withdrawn client funds from the FDIC-insured and interest-bearing aggregated deposit account held at a second one of the banks of a second one of the banking institutions more than six (6) times during a month while preserving an insured and interest-bearing status of the FDIC-insured and interest-bearing aggregated deposit account held at the second one of the banks.

11. A computer-implemented method for managing funds for a plurality of client accounts for a plurality of clients whose funds were accepted for deposit in respective client accounts held in the names of the respective different clients at a first banking institution, the method comprising:

- (a) accepting client funds from each of a plurality of the clients, with funds from each different client being accepted into a respective client account held in the name of that respective client at the first banking institution;
- (b) maintaining or having maintained an FDIC-insured and interest-bearing aggregated deposit account at the first banking institution;
- (c) maintaining or having maintained or receiving access by computer to an electronic database, on one or more computer-readable media containing information on funds held by each client in a plurality of FDIC-insured and interest-bearing aggregated deposit accounts, each aggregated deposit account held at a different banking institution;
- (d) transferring or have transferred client funds of a plurality of the client accounts to the aggregated deposit account at the first banking institution except that for clients with a balance of funds in the aggregated deposit account at the first banking institution that equal or exceed a specified amount depositing or having deposited additional funds of that client to one of the aggregated deposit accounts in a different one of the banking institutions;
- (e) withdrawing or having withdrawn client funds from the aggregated deposit account held in one of the banks of one of the banking institutions more than six (6) times during a month while preserving an insured and interest-bearing status of that aggregated deposit account in the one bank; and
- (f) updating the electronic database based on the transfers to and withdrawals in the plurality of aggregated deposit accounts or receiving electronic access.

12. The method of claim 11, wherein the withdrawing or having withdrawn step is made from an aggregated deposit account at the first banking institutions through an aggregated demand deposit account at the first banking institution.

13. The method of claim 12, further comprising receiving a selection from one or more clients of exclusions of one or more banking institutions, and providing such exclusions to assist in selecting the different one of the banking institutions to deposit the additional funds to the aggregated deposit account held thereby.

14. The method of claim 11, further comprising receiving a selection from one or more clients of exclusions of one or more banking institutions, and providing such exclusions to assist in selecting the different one of the banking institutions to deposit the additional funds to the aggregated deposit account held thereby.

15. The method of claim 11, further comprising receiving from one or more clients an exclusion of banking institutions

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located in a state where the client resides, and providing such exclusion to assist in selecting the different one of the banking institutions to deposit the additional funds to the aggregated deposit account held thereby.

16. The method of claim 11, further including the step of, on a regular, periodic, or recurring basis, calculating a net transaction as the sum of individual client deposits and withdrawals from each of the plurality of the client accounts; and, further including the step of utilizing the net transaction calculation to determine an amount of funds that need to be deposited into one or more of the aggregated deposit accounts to cover client deposits, or an amount of funds that needs to be withdrawn from one or more of the aggregated deposit accounts to cover client withdrawals.

17. The method of claim 11, wherein the withdrawing or having withdrawn step is substantially performed only by one or more of the following methods: in person, or by mail, or by messenger, or by telephone and distributed by mail, or by automated teller machine, or a combination thereof so that the insured and interest-bearing status of the aggregated deposit account at the first banking institution is preserved.

18. A computer-implemented method for managing funds for a plurality of client accounts for a plurality of clients whose funds were accepted for deposit in respective client accounts held in the names of the respective clients at a first banking institution that includes a first bank in its infrastructure, the method comprising:

- (a) maintaining a plurality of FDIC-insured and interest-bearing aggregated deposit accounts, each aggregated deposit account held in a different respective bank of a different respective banking institution including an FDIC-insured and interest-bearing aggregated deposit account held at the first bank in the first banking institution;
- (b) maintaining or having maintained an electronic database, on one or more computer-readable media, containing information on funds held by each client in the plurality of aggregated deposit accounts;
- (c) administering the aggregated deposit accounts to transfer or have transferred client funds that had been accepted into respective client accounts held in the names of the respective clients at the first banking institution to the aggregated deposit account at the first bank except that for clients with a balance of funds in the aggregated deposit account at the first bank that equal or exceed a specified amount depositing or having deposited additional funds of that client to one of the aggregated deposit accounts in one of the different banks in one of the different banking institutions;
- (d) withdrawing or having withdrawn client funds from the FDIC-insured and interest-bearing aggregated deposit account held at one of the banks of one of the banking institutions more than six (6) times during a month while preserving an insured and interest-bearing status of the FDIC-insured and interest-bearing aggregated deposit account held at the one bank; and
- (e) updating or having updated the electronic database based on the transfers to and withdrawals in the plurality of aggregated deposit accounts.

19. The method of claim 18, wherein the withdrawing or having withdrawn step is made from an aggregated deposit account at one of the banks at one of the banking institutions through an aggregated demand deposit account at that bank.

20. The method of claim 19, further comprising selecting the different one of the banks to deposit the additional funds to the aggregated deposit account held thereby based at least on an exclusion of one or more banks made by the client.

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21. The method of claim 18, further including the step of, on a regular, periodic, or recurring basis, calculating a net transaction as the sum of individual client deposits and withdrawals from each of the plurality of the client accounts; and, further including the step of utilizing the net transaction calculation to determine an amount of funds that need to be deposited into one or more of the aggregated deposit accounts to cover client deposits, or an amount of funds that needs to be withdrawn from one or more of the aggregated deposit accounts to cover client withdrawals.

22. The method of claim 18, further including the steps of: (a) monitoring requested debits of funds from each of the client accounts, and (b) selectively authorizing or rejecting each of the requested debits based upon an account balance in a client account or a client's proportionate share in the plurality of aggregated deposit accounts or based upon both the account balance in the client account and the client's proportionate share in the plurality of aggregated deposit accounts.

23. The method of claim 18, wherein the withdrawing or having withdrawn step is substantially performed only by one or more of the following methods: in person, or by mail, or by messenger, or by telephone and distributed by mail, or by automated teller machine, or a combination thereof so that the insured and interest-bearing status of the aggregated deposit accounts is preserved.

24. The method of claim 18, further comprising selecting the different one of the banks to deposit the additional funds to the aggregated deposit account held thereby based at least on an exclusion of one or more banks made by the client.

25. The method of claim 18, further comprising selecting the different one of the banking institutions to deposit the excess over the specified amount to the aggregated deposit account held thereby based on an exclusion of one or more banks located in a state where the client resides.

26. The method of claim 18, withdrawing or having withdrawn client funds from the FDIC-insured and interest-bearing aggregated deposit account held at a second one of the banks of a second one of the banking institutions more than six (6) times during a month while preserving an insured and interest-bearing status of the FDIC-insured and interest-bearing aggregated deposit account held at the second one of the banks.

27. A computer-implemented method for managing funds for a plurality of client accounts for a plurality of clients whose funds were accepted for deposit in respective client accounts held in the names of the respective different clients at a first banking institution that includes a first bank in its infrastructure, the method comprising:

- (a) accepting client funds from each of a plurality of the clients, with funds from each different client being accepted into a respective client account held in the name of that respective client at the first banking institution;
- (b) maintaining or having maintained an FDIC-insured and interest-bearing aggregated deposit account at the first bank in the first banking institution;
- (c) maintaining or having maintained or receiving access by computer to an electronic database, on one or more computer-readable media, containing information on funds held by each client in a plurality of FDIC-insured and interest-bearing aggregated deposit accounts, each aggregated deposit account held in a different respective bank of a different respective banking institution;
- (d) transferring or have transferred client funds of a plurality of the client accounts to the aggregated deposit account at the first bank except that for clients with a balance of funds in the aggregated deposit account at the

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first bank that equal or exceed a specified amount depositing or having deposited additional funds of that client to one of the aggregated deposit accounts in one of the different banks in one of the different banking institutions;

- (e) withdrawing or having withdrawn client funds from the aggregated deposit account held at one of the banks of one of the banking institutions more than six (6) times during a month while preserving an insured and interest-bearing status of the FDIC-insured and interest-bearing aggregated deposit account held at the one bank; and
- (f) updating the electronic database based on the transfers to and withdrawals in the plurality of aggregated deposit accounts or receiving electronic access.

28. The method of claim 27, wherein the withdrawing or having withdrawn step is made from an aggregated deposit account at the first bank through an aggregated demand deposit account at the first bank.

29. The method of claim 28, further comprising receiving one or more exclusions of one of the clients of one or more banks, and using such exclusions to assist in selecting the different one of the banks to deposit the additional funds to the aggregated deposit account held thereby.

30. The method of claim 27, further comprising receiving one or more exclusions of one of the clients of one or more banks, and using such exclusions to assist in selecting the different one of the banks to deposit the additional funds to the aggregated deposit account held thereby.

31. The method of claim 27, further comprising receiving one or more exclusions of one of the clients of one or more banks located in a state where the client resides, and providing such exclusion to assist in selecting the different one of the banks to deposit the additional funds to the aggregated deposit account held thereby.

32. The method of claim 27, further including the step of, on a regular, periodic, or recurring basis, calculating a net transaction as the sum of individual client deposits and withdrawals from each of the plurality of the client accounts; and, further including the step of utilizing the net transaction calculation to determine an amount of funds that need to be deposited into one or more of the aggregated deposit accounts to cover client deposits, or an amount of funds that needs to be withdrawn from one or more of the aggregated deposit accounts to cover client withdrawals.

33. The method of claim 27, wherein the withdrawing or having withdrawn step is substantially performed only by one or more of the following methods: in person, or by mail, or by messenger, or by telephone and distributed by mail, or by automated teller machine, or a combination thereof so that the insured and interest-bearing status of the aggregated deposit account at the first banking institution is preserved.

34. The method of claim 27, withdrawing or having withdrawn client funds from the FDIC-insured and interest-bearing aggregated deposit account held at a second one of the banks of a second one of the banking institutions more than six (6) times during a month while preserving an insured and interest-bearing status of the FDIC-insured and interest-bearing aggregated deposit account held at the second one of the banks.

35. A computer-implemented method for managing funds for a plurality of client accounts for a plurality of clients of a first banking institution that includes a first bank in its infrastructure, wherein the respective client funds were accepted for deposit in respective client accounts held in the names of the respective clients, the method comprising:

- (a) maintaining a plurality of FDIC-insured and interest-bearing aggregated deposit accounts, each aggregated



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deposit account held in a different respective bank of a different respective banking institution including an FDIC-insured and interest-bearing aggregated deposit account held at the first bank in the first banking institution;

- (b) maintaining or having maintained an electronic database, on one or more computer-readable media, containing information on funds held by each client in the plurality of aggregated deposit accounts;
- (c) administering the aggregated deposit accounts to transfer or have transferred client funds that had been accepted into respective client accounts held in the names of the respective clients at the first banking institution to the aggregated deposit account at the first bank except that for clients with a balance of funds in the aggregated deposit account at the first bank that equal or exceed a specified amount depositing or having deposited additional funds of that client to one of the aggregated deposit accounts in one of the different banks in one of the different banking institutions;
- (d) withdrawing or having withdrawn client funds from the FDIC-insured and interest-bearing aggregated deposit account held at one of the banks of one of the banking institutions more than six (6) times during a month while preserving an insured and interest-bearing status of the FDIC-insured and interest-bearing aggregated deposit account held at the one bank; and
- (e) updating or having updated the electronic database based on the transfers to and withdrawals in the plurality of aggregated deposit accounts.

36. The method of claim 35, wherein the withdrawing or having withdrawn step is made from an aggregated deposit account at one of the banks at one of the banking institutions through an aggregated demand deposit account at that bank.

37. The method of claim 36, further comprising selecting the different one of the banks to deposit the additional funds to the aggregated deposit account held thereby based at least on an exclusion of one or more banks made by the client.

38. The method of claim 35, further including the step of, on a regular, periodic, or recurring basis, calculating a net transaction as the sum of individual client deposits and withdrawals from each of the plurality of the client accounts; and, further including the step of utilizing the net transaction calculation to determine an amount of funds that need to be deposited into one or more of the aggregated deposit accounts to cover client deposits, or an amount of funds that needs to be withdrawn from one or more of the aggregated deposit accounts to cover client withdrawals.

39. The method of claim 35, further including the steps of: (a) monitoring requested debits of funds from each of the client accounts, and (b) selectively authorizing or rejecting each of the requested debits based upon an account balance in a client account or a client's proportionate share in the plurality of aggregated deposit accounts or based upon both the account balance in the client account and the client's proportionate share in the plurality of aggregated deposit accounts.

40. The method of claim 35, wherein the withdrawing or having withdrawn step is substantially performed only by one or more of the following methods: in person, or by mail, or by messenger, or by telephone and distributed by mail, or by automated teller machine, or a combination thereof so that the insured and interest-bearing status of the aggregated deposit accounts is preserved.

41. The method of claim 35, further comprising selecting the different one of the banks to deposit the additional funds to the aggregated deposit account held thereby based at least on an exclusion of one or more banks made by the client.

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42. The method of claim 35, further comprising selecting the different one of the banking institutions to deposit the excess over the specified amount to the aggregated deposit account held thereby based on an exclusion of one or more banks located in a state where the client resides.

43. The method of claim 35, withdrawing or having withdrawn client funds from the FDIC-insured and interest-bearing aggregated deposit account held at a second one of the banks of a second one of the banking institutions more than six (6) times during a month while preserving an insured and interest-bearing status of the FDIC-insured and interest-bearing aggregated deposit account held at the second one of the banks.

44. A computer-implemented method for managing funds for a plurality of client accounts for a plurality of clients whose funds were accepted for deposit in respective client accounts held in the names of the respective different clients at a first banking institution that includes a first bank in its infrastructure, the method comprising:

- (a) accepting client funds from each of a plurality of the clients, with funds from each different client being accepted into a respective client account held in the name of that respective client at the first banking institution;
- (b) maintaining or having maintained an FDIC-insured and interest-bearing aggregated deposit account at the first bank in the first banking institution;
- (c) maintaining or having maintained or receiving access by computer to an electronic database, on one or more computer-readable media, containing information on funds held by each client in a plurality of FDIC-insured and interest-bearing aggregated deposit accounts, each aggregated deposit account held in a different respective bank of a different respective banking institution;
- (d) transferring or have transferred client funds of a plurality of the client accounts to the aggregated deposit account at the first bank except that for clients with a balance of funds in the aggregated deposit account at the first bank that equal or exceed a specified amount depositing or having deposited additional funds of that client to one of the aggregated deposit accounts in one of the different banks in one of the different banking institutions;
- (e) withdrawing or having withdrawn client funds from the aggregated deposit account held at one of the banks of one of the banking institutions more than six (6) times during a month while preserving an insured and interest-bearing status of that aggregated deposit account held at the one bank; and
- (f) updating the electronic database based on the transfers to and withdrawals in the plurality of aggregated deposit accounts or receiving electronic access.

45. The method of claim 44, wherein the withdrawing or having withdrawn step is made from an aggregated deposit account at the first bank through an aggregated demand deposit account at the first bank.

46. The method of claim 45, further comprising receiving one or more exclusions of one of the clients of one or more banks, and using such exclusions to assist in selecting the different one of the banks to deposit the additional funds to the aggregated deposit account held thereby.

47. The method of claim 44, further comprising receiving one or more exclusions of one of the clients of one or more banks, and using such exclusions to assist in selecting the different one of the banks to deposit the additional funds to the aggregated deposit account held thereby.

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48. The method of claim 44, further comprising receiving one or more exclusions of one of the clients of one or more banks located in a state where the client resides, and providing such exclusion to assist in selecting the different one of the banks to deposit the additional funds to the aggregated deposit account held thereby.

49. The method of claim 44, further including the step of, on a regular, periodic, or recurring basis, calculating a net transaction as the sum of individual client deposits and withdrawals from each of the plurality of the client accounts; and, further including the step of utilizing the net transaction calculation to determine an amount of funds that need to be deposited into one or more of the aggregated deposit accounts to cover client deposits, or an amount of funds that needs to be withdrawn from one or more of the aggregated deposit accounts to cover client withdrawals.

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50. The method of claim 44, wherein the withdrawing or having withdrawn step is substantially performed only by one or more of the following methods: in person, or by mail, or by messenger, or by telephone and distributed by mail, or by automated teller machine, or a combination thereof so that the insured and interest-bearing status of the aggregated deposit account at the first banking institution is preserved.

51. The method of claim 44, withdrawing or having withdrawn client funds from the FDIC-insured and interest-bearing aggregated deposit account held at a second one of the banks of a second one of the banking institutions more than six (6) times during a month while preserving an insured and interest-bearing status of the FDIC-insured and interest-bearing aggregated deposit account held at the second one of the banks.

\* \* \* \* \*

# EXHIBIT C



US007536350B1

(12) **United States Patent**  
**Bent et al.**

(10) **Patent No.:** **US 7,536,350 B1**  
(45) **Date of Patent:** **May 19, 2009**

(54) **SYSTEMS AND METHODS FOR PROVIDING  
ENHANCED ACCOUNT MANAGEMENT  
SERVICES FOR MULTIPLE BANKS**

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JP 10049590 2/1998

(\*) **Notice:** Subject to any disclaimer, the term of this  
patent is extended or adjusted under 35  
U.S.C. 154(b) by 1404 days.

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(22) **Filed:** **Mar. 6, 2003**

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#### Related U.S. Application Data

(63) Continuation-in-part of application No. 10/071,053,  
filed on Feb. 8, 2002, and a continuation-in-part of  
application No. 09/677,535, filed on Oct. 2, 2000, said  
application No. 10/071,053 is a continuation-in-part of  
application No. 09/176,340, filed on Oct. 21, 1998,  
now Pat. No. 6,374,231, said application No. 09/677,  
535 is a continuation-in-part of application No.  
09/176,340, filed on Oct. 21, 1998, now Pat. No. 6,374,  
231.

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(57)

#### ABSTRACT

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**G06Q 40/00** (2006.01)

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705/35

See application file for complete search history.

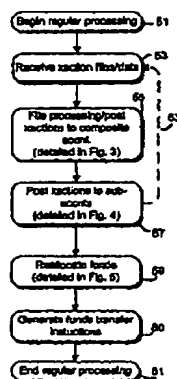
This invention includes methods for delivering account man-  
agement services to multiple financial institutions that pro-  
vide for customer deposit accounts without transaction but  
than nevertheless offer interest and receive enhanced deposit  
insurance. The methods apply at least one customer transac-  
tion to that customer's deposit account, and then re-allocate  
customer-deposited funds among the plurality of financial  
institutions in order that, for each customer, the risk of loss is  
not substantially increased, and that, for each financial insti-  
tution, the amount of customer-deposited funds is not sub-  
stantially decreased. Preferably, risk of loss is reduced by  
increasing the fraction of each customer's deposited funds  
covered by FDIC deposit insurance, and interest and  
enhanced insurance are available by innovative management  
of customer transactions and accounts. This invention also  
includes computer systems for practicing the methods and  
program products for accordingly configuring such computer  
systems.

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**18 Claims, 5 Drawing Sheets**



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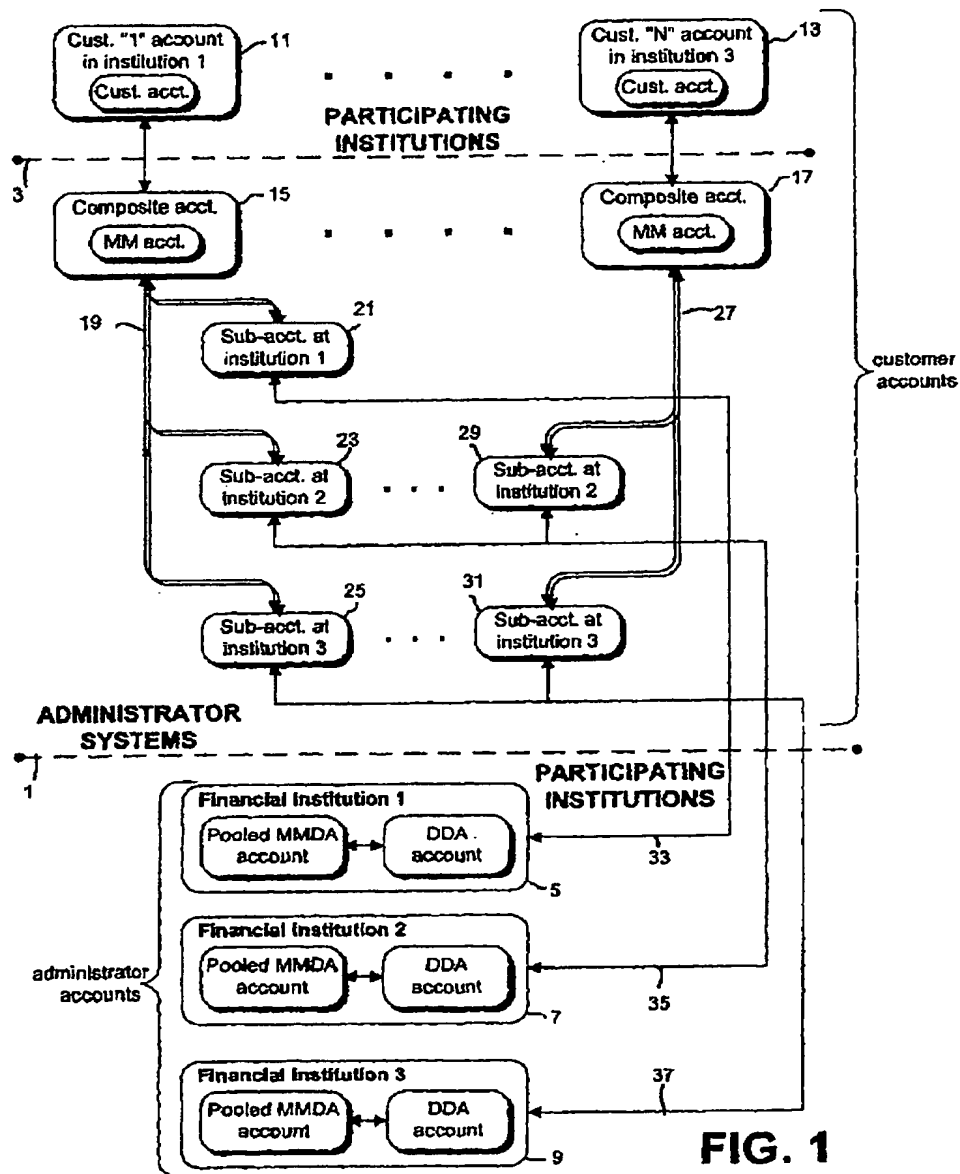
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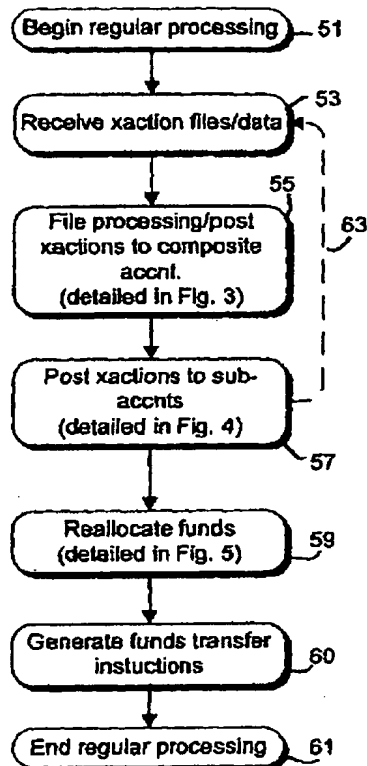


FIG. 2

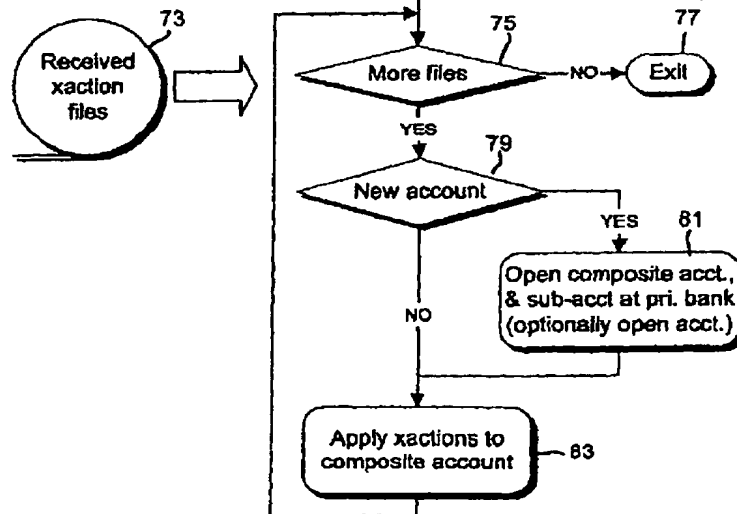


FIG. 3

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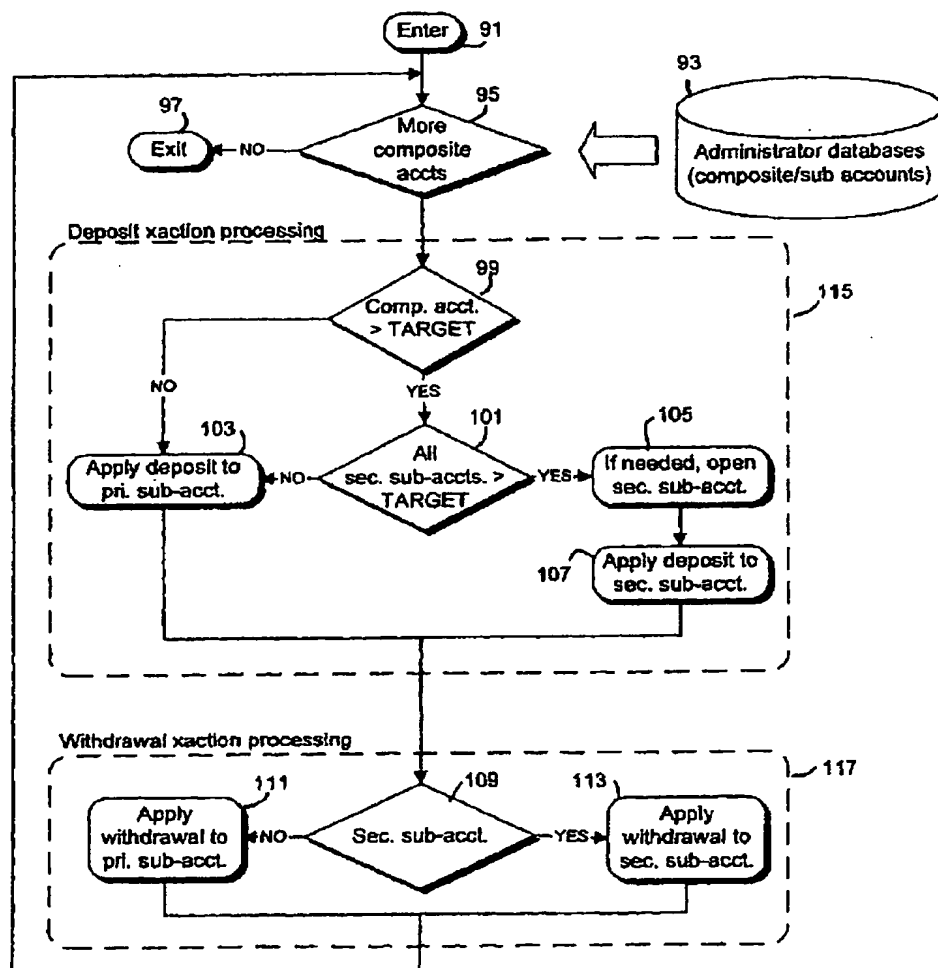


FIG. 4

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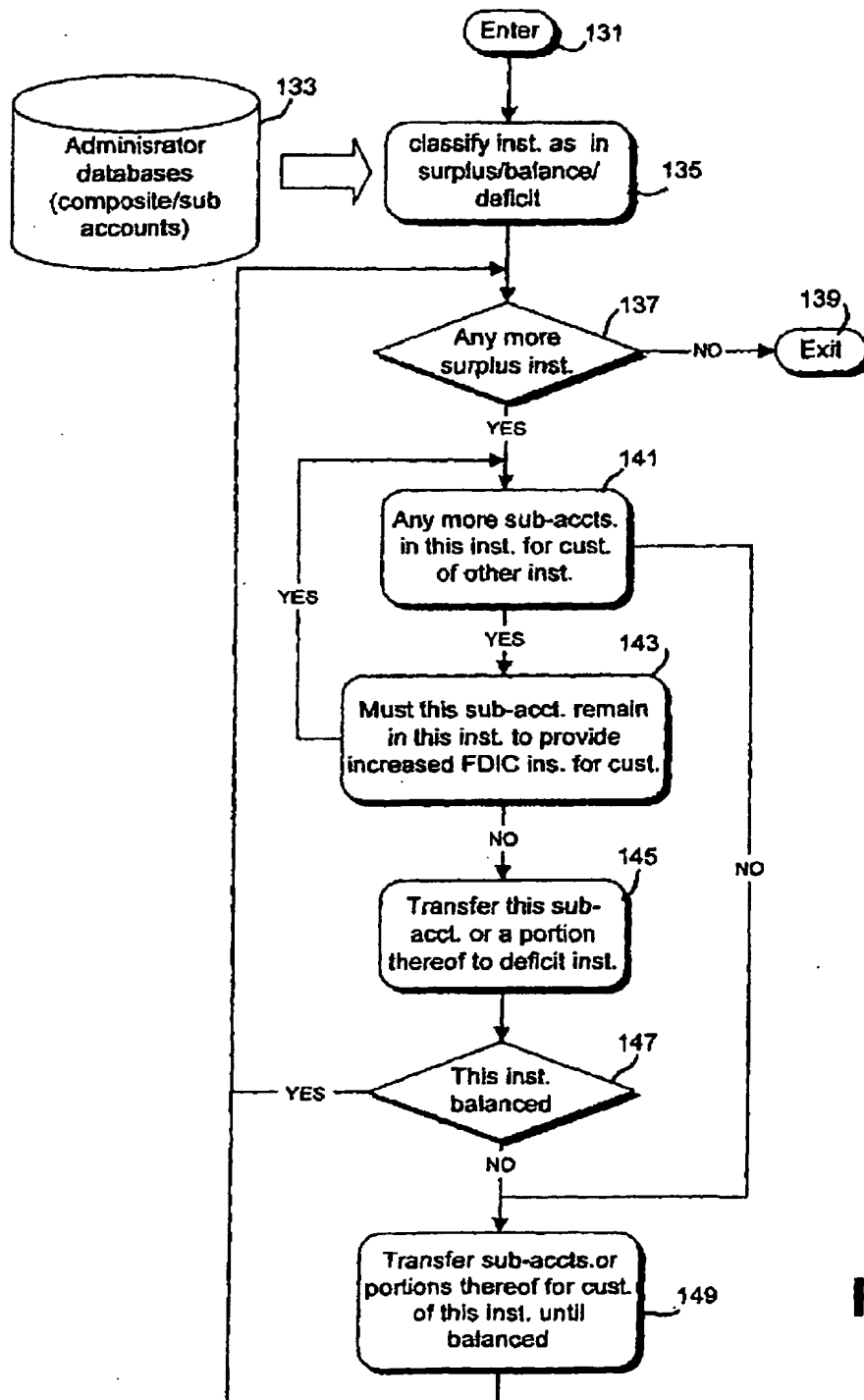


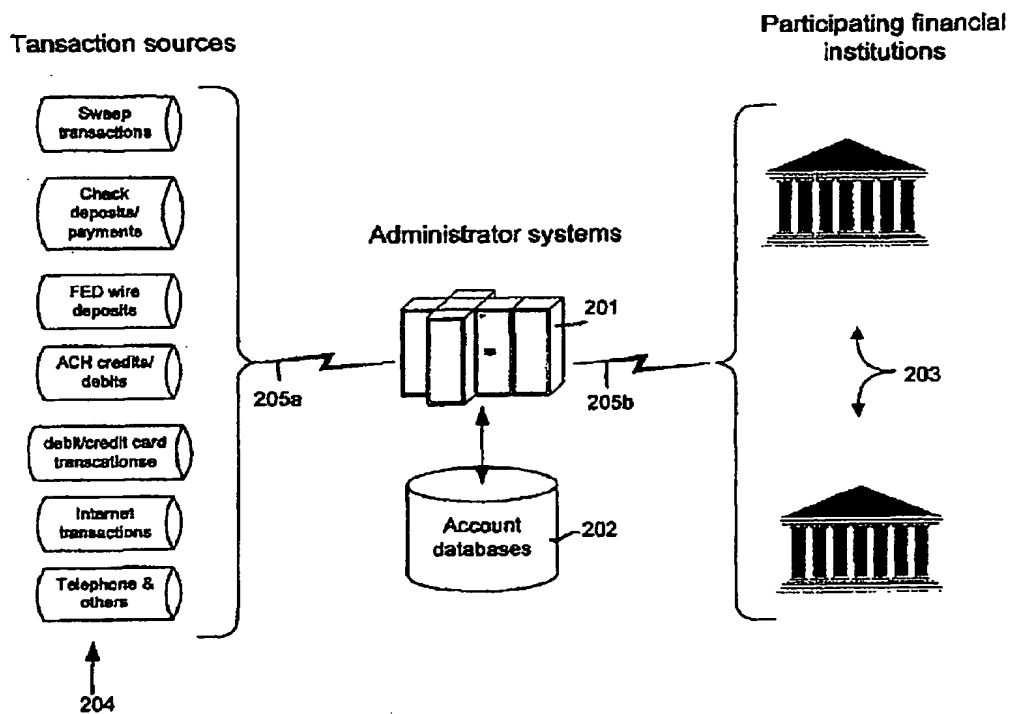
FIG. 5

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**FIG. 6**

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## SYSTEMS AND METHODS FOR PROVIDING ENHANCED ACCOUNT MANAGEMENT SERVICES FOR MULTIPLE BANKS

This application is a continuation-in-part of application Ser. No. 09/677,535, filed Oct. 2, 2000, and a continuation-in-part of application Ser. No. 10/071,053, filed Feb. 8, 2002, both of which are continuations-in-part of U.S. patent application Ser. No. 09/176,340, filed Oct. 21, 1998 and now U.S. Pat. No. 6,374,231 B1. This application also claims benefit of provisional application 60/442,849, filed Jan. 27, 2003. The entirety of the disclosure of each of these applications is incorporated herein by reference for all purposes.

### 1. FIELD OF THE INVENTION

The present invention provides systems and methods that deliver account management services to multiple participating financial institution (including banks) so that they may offer to their customers interest-earning, deposit accounts without withdrawal restrictions and/or with enhanced deposit insurance. This invention's management methods preferably maintain each participating financial institution's total customer funds on deposit.

### 2. BACKGROUND OF THE INVENTION

It would be desirable if depositors and investors could obtain fully-insured, interest-bearing accounts with an unlimited number of transactions or withdrawals per month. However, present statutory and regulatory requirements, which in the United States ("US") are generally codified as Title 12 of the United States Code ("U.S.C.") (Banks and Banking), restrict the flexibility of banks and savings institutions, and limit investors and depositors seeking investments and deposits having a lower risk profile to a rather limited selection of choices, all of which suffer inhibiting constraints.

First, Title 12 U.S.C. Chapter 3 (Federal Reserve System), along with Title 12 Code of Federal Regulations ("C.F.R.") Chapter II Part 204 (12 C.F.R. §§ 204.1-204.136) (Federal Reserve Board ("FRB") Regulation D) and Title 12 C.F.R. Chapter II Part 217 (12 C.F.R. §§ 217.1-217.101) (FRB Regulation Q), prevents certain financial institutions from paying interest on deposit accounts that permit unlimited (at least more than six) monthly withdrawals of deposited funds (known as "demand deposit accounts" or "DDAs"). More specifically, 12 C.F.R. 329.2 states that "no bank shall, directly or indirectly, by any device whatsoever, pay interest on any demand deposit". A "deposit" is any money placed into a checking account, savings account, Certificate of Deposit (CD), or the like. In a "demand" account, the owner can make an unlimited number of funds transfers to another account (having the same or a different owner), or to a third party, typically by bank drafts, checks, credit cards, and debit cards. In other words, an account in which a depositor has the ability to make six or more monthly transfers will be deemed a demand account and no interest will be payable on the funds deposited therein (unless the funds of a non-commercial entity are held in a NOW account under 18 U.S.C. 1832(a)). Owners of demand accounts are denied interest on their funds.

Second, 12 U.S.C. § 1821(a) limits government-guaranteed deposit insurance provided by the Federal Deposit Insurance Corporation ("FDIC") to a maximum coverage of \$100K (K=1,000) for each owner of (or, generally, each ownership interest in) funds deposited in a single insured institution. The FDIC, created under Title 12 U.S.C. Chapter 3 (the

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Federal Deposit Insurance Corporation), provides insurance for deposits in most United States banks through its Bank Insurance Fund ("BIF") and in most United States savings institutions through its Savings Association Insurance Fund ("SAIF"). The rules governing insurance of deposits in institutions insured by the BIF and the SAIF are the same, and base insurance coverage on the concept of ownership rights and capacities. Funds held in different ownership categories are insured separately from each other, and funds owned by the same ownership category but held in different accounts at the same financial entity are subsumed under the same insurance coverage limit.

Banks and other savings institutions have developed several approaches, which include money-market mutual fund sweeps and re-purchase agreement ("repo") sweeps, offered by third parties in an effort to compete with those financial institutions, for example broker/dealers, who are able to offer interest on cash balances for all their customers including commercial customers by using money-market mutual funds. However, these approaches are disadvantageous in that they involve a removal of commercial customer deposits from the bank's balance sheets into the assets of the money market-mutual fund provider, and also of the deposits from FDIC protection. This disadvantage is especially burdensome for smaller banks, such as regional or local banks.

Therefore, what is needed are systems and methods for providing fully-insured (i.e., with insurance that may exceed \$100,000), interest-bearing accounts with an unlimited number of transactions per month without removing net deposits from participating financial institutions. It would be especially advantageous if these systems could be readily integrated into the existing infrastructure of a bank, savings institution, credit union, or other financial institution in a manner that would minimally disrupt these institution's existing customer relationships.

Citation or identification of any reference in this section or any section of this application shall not be construed that such reference is available as prior art to the present invention. Further, headings and sub-headings are used for convenience and clarity only; they are not to be interpreted in any limiting fashion.

### 3. SUMMARY OF THE INVENTION

The present invention overcomes the above-identified deficiencies in the prior art by providing systems and methods that extend in a novel and advantageous manner certain prior inventions made by one or more of the current inventors. These prior inventions may be briefly summarized as follows (for the purposes of this invention only and without any imitation).

In prior application Ser. No. 09/176,340, filed Oct. 21, 1998 and now U.S. Pat. No. 6,374,231 B1 (the "parent invention") (which is incorporated herein by reference in its entirety for all purposes) systems and methods are disclosed for managing demand accounts of multiple customers of any financial institution. That invention invests the customer account funds in a single aggregated investment account at a bank, and manages the single investment account so that the account funds invested therein earn interest and are insured, while providing for customer deposits and unlimited withdrawals by use of a wide range of financial networks and services. However, insurance for individual customer accounts is limited by the \$100K FDIC maximum-coverage limit, so balances over \$100,000 are not insured.

Prior application Ser. Nos. 09/677,535, 10/071,053, and 60/372,347 (which are incorporated herein by reference in its

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entirety for all purposes) disclose various improvements of the above invention. Prior application Ser. No. 10/071,053, filed Feb. 8, 2002, adapts the above invention to banks, especially smaller banks, that wish to retain close customer relationships and additionally do not wish their ability to make loans affected by sweeping deposited funds to a money-market mutual fund or a difficult-to-manage repurchase program (where assets must be collateralized), because deposited funds can be important as a source for funding loan demand. In that invention, systems and methods are provided that act as an agent of a bank to assist in transferring ("sweeping") funds between customer demand-deposit accounts and interest-earning, insured, investment accounts ("money market" accounts) maintained in the bank. The provided systems integrate closely with the bank's existing systems, and may optionally interface with external financial network and service systems.

Prior application Ser. No. 09/677,535, filed Oct. 2, 2000, overcomes the \$100K limit on individual deposit insurance by providing systems and methods managing multiple insured investment accounts with each account held at a separate bank (or other financial institution). The invention transfers the bank-customer's funds among the separate banks so that no customer of the bank has more than \$100K invested in any one of the separate banks. Deposits are managed also to earn interest while being available for unlimited withdrawals by use of a wide range of financial networks and services. Accordingly, customers of the bank with demand account balances exceeding \$100K may be now covered by FDIC insurance available through multiple banks, although deposit balances exceeding approximately \$100K must be transferred out of the initiating bank.

Prior application Ser. No. 60/372,347, filed Apr. 12, 2002 adds a flexible interest rate feature to the above inventions. According to this feature, a financial institution (or a bank) may pay interest on a customer account that depends on a wide range of factors, for example, on the balance in the customer account, on the total customer balance at the financial institution, on marketing considerations, and so forth.

Accordingly, the objects of the present invention include systems and methods that provide participating financial institutions with the ability to offer to customers deposit accounts an unlimited number of monthly transactions while improving upon these prior inventions.

It is an object of the invention that the funds deposited in the insured, interest-earning, deposit accounts at participating financial institutions remain on the institutions' books and available for normal business purposes, such as a source for loan funding; or in other words, that the methods of this invention maintain each participating institutions total deposited funds.

It is another object of the invention that funds deposited in the deposit accounts at participating financial institutions earn interest.

It is another object of the invention that interest may be earned on customer deposits at interest rates based on plural discrete tiers (or on a more smooth function) selected in accordance with each customer's account parameters such as current cash balance, nature of the customer-financial entity relationship, and so forth.

It is another object of the invention that funds deposited in one of the interest-earning, deposit accounts at the participating financial institutions are fully FDIC-insured, whether or not they exceed \$100K.

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It is another object that the systems and methods of the invention be readily integrable into the existing institutional infrastructure and have minimal impact on presently-existing customer relationships.

It is another object of the invention that its methods and system to permit customers to deposit funds into, and to withdraw funds from, an account by use of many financial instruments networks, and services, and to accept and process customer deposit/withdrawal transactions however presented, such as in periodic batches or files.

These objects are met at least in part by systems and methods that manages a novel arrangement of accounts, especially pairs of demand deposit and money market accounts holding funds from plural customer sub-accounts at the participating banks, that is particularly advantageous in view of the applicable United States banking laws and regulations. To simplify subsequent descriptions, the following paragraphs describe aspects of the banking environment of this invention and explain certain terms used throughout the description.

Concerning the banking environment, generally, relevant banking laws and regulations prohibit institutions from paying interest on deposit accounts not subject to any withdrawal restrictions whatsoever (referred to as "demand accounts," or as "demand deposit accounts" abbreviated as "DDA"), while permitting interest on deposit accounts subject to withdrawal restrictions, such as a required withdrawal notice (referred to as "savings accounts").

Nevertheless, certain deposit accounts not requiring withdrawal notice but subject to other withdrawal restrictions may still be deemed "savings accounts" capable of earning interest. For example, accounts known as money market deposit accounts ("MMDA") that do not require withdrawal notice (but may so require it at any time) are nevertheless deemed savings accounts capable of earning interest if withdrawals or transfers to third parties are limited to less than six monthly. (See 12 C.F.R. § 204.2(d)(1).) But certain types of transfers from MMDAs are exempt from this six-withdrawal limit. (See 12 C.F.R. § 204.2(d)(2).) Specifically, an unlimited number of monthly transfers may be made between an interest-earning MMDA account and a DDA account if (i) both accounts are in the same financial institution (or bank), (ii) both accounts are registered in the same name, and (iii) transfers are ordered in person, such as by messenger or other agent. An unlimited number of deposits into savings accounts or MMDAs is always allowed.

Second, the \$100K FDIC insurance limitation is determined per-beneficial-ownership category per-insured institution, and is not determined on a per-account basis. For example, all ownership interests of a single person (or other entity) held in a single insured institution, whether they are held in multiple separate accounts and whether they are held in a single account pooled with the interests of others, are all aggregated for purposes of the \$100K coverage limitation. Further, a person's ownership interests in separate insured institutions are treated separately, and are separately aggregated in each institution for purposes of the separate \$100K coverage limitation available in each institution. (See 12 U.S.C. § 1821(a)(1)(C).) Consequently, a person's deposit coverage will not be reduced or jeopardized if it is combined with the interests of others in a single account, and may be increased if that person's ownership interests are deposited in separate or aggregated accounts in multiple institutions.

Therefore, this invention establishes and manages a pair of identically-registered accounts (referred to as a "MMDA-DDA pair") in one or all of the financial institutions (or banks) participating in an implementation of this invention. One account of each pair is an interest-earning MMDA subject to

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withdrawal limitations; the other account is a DDA not subject to any withdrawal limitations and therefore not interest-earning. Funds deposited in participating banks by participating customers are invested and held in the MMDAs in the participating institutions. Participating customers may be, for example, individuals, business entities, governmental entities, and so forth, because MMDA depositors may be of many organizational types. The DDA of each pair serves merely as a conduit through which to withdraw or transfer funds from (and, optionally, to) the paired MMDA. Since both accounts of each account-pair are identically registered at each participating bank, and since fund transfers from the MMDA through the paired DDA are ordered in person (by messenger or other agent), funds invested in the MMDA continue to earn interest even though they may be withdrawn through the paired DDA without restriction. In this manner, this invention achieves its objectives while comporting with the above-described banking environment.

In many embodiments, an organization entity (referred to as an "operating entity" or as an "administrator") has responsibility for the previously-described account pairs, along with other accounts maintained and managed by this invention, and for funds transfers among the accounts. In particular, the MMDA-DDA account pairs in the participating banks may be registered as "administrator (or organizational name of the operating entity) as agent for designated customers." The operating entity typically will act as an agent for the participating customers and the participating banks according to agreements entered into when customers or banks become participants in implementations of this invention. The administrator (or other operating entity) may also manage and operate the systems and methods of the present invention. The administrator, or operating entity, may be structured according to the many known forms of business organization, such as proprietorship, partnership, joint venture, corporation, and the like. Also, the administrator may be a business entity independent of all participating banks, or may be a subsidiary of one of the participating banks, or may be a joint venture of the banks.

Next, for convenience and clarity, the following terms used in the present specification have the following meanings. First, the term "financial institution" (and "participating financial institution") refers to institutions that may participate in the present invention by virtue of having certain preferred characteristics. One characteristic is that participating financial institutions offer accounts against which customers may make a variety of deposit and withdrawal transactions, where different types of participating institutions may offer customers different types of transactions. Another preferred characteristic is that a participating financial institution offer interest-bearing, insured MMDA-type accounts, or be associated in some fashion with a financial institution that does offer such accounts. Such MMDAs are generally offered by banks, and because the present invention manages participating customer accounts by investing their funds in one or more MMDAs, a participating financial institution derives greater benefit from the invention if it receives some value for these MMDA investments by being associated with one or more banks holding these MMDA investment accounts. In particular, banks may be participating financial institutions and receive direct benefit from the methods of the present invention by both offering customer accounts and providing MMDAs for investment, which may be available according to this invention as deposit accounts for other participating financial institutions. Also, broker/dealers, investment advisors, insurance companies, and so forth that may be participating financial institutions. Here, the funds of the customer

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accounts are invested in MMDAs in a bank designated by participating institution. A designated bank may not have any particular affiliation with the designating financial institution, or may be affiliated or associated in manners known in the art (for example, a corporate entity with a banking subsidiary and a broker/dealer, an insurance, or an investment advisory subsidiary, or a bank or bank holding company with a broker/dealer subsidiary, or so forth).

Therefore, generally, the term financial institution refers to all such preferred institutions with any banking association or affiliation permitted by law and regulation. However, for convenience and clarity but without limitation, the following description is often in terms of embodiments where participating institutions are banks holding both customer accounts and the investment MMDAs. If some participating customer accounts are in, for example, a broker/dealer, it is to be understood that the associated MMDA-DDA pair is held in the affiliated or associated bank. Also, where customer accounts are referred to in the banking embodiment as DDAs, it is also to be understood that in general customer accounts may also be broker/dealer accounts, investment advisory accounts, and so forth.

Customers of a participating financial institution (or bank) may individually choose whether or not one or more of their accounts at that institution will participate in the enhanced insurance and management services of this invention. Managed accounts are referred to as "participating customer accounts," or for convenience, simply as "customer accounts" or even as "customers." Without limitation, a single individual customer may have non-participating accounts at participating institutions, or may have two or more participating accounts at the same or at different participating institutions, or so forth.

Funds deposited in a participating customer account are referred to as that "customer's participating funds" or more simply as "customer's funds" or as "participating funds." Also, all participating funds held in the participating customer accounts at a single participating financial institution are referred to as that institution's "aggregate (or total) participating customer funds," and all funds held at an institution for all participating customers (not just that institution's customers) are referred to as the institutions "aggregate (or total) participating deposits."

Where attention is focused on a particular one of the participating institutions, it will often be referred to as "this institution," while the remaining participating institutions will be then referred to as the "other institutions." Further, the institution of a customer account, that is the institution at which the customer transacts business for that account, is referred to as the "primary institution" for that customer account or customer; other participating banks are "secondary banks" for that customer account or customer. Each participating customer account (or customer) has exactly one primary bank.

Commonly-available deposit insurance (for example, FDIC insurance) often limits coverage to a certain maximum for all the funds of a single ownership category in a single insured institution. It is often preferable for embodiments of this invention to limit the maximum amount of a single customer's funds held in a single institution to a "target amount" (or "target") which is less than the maximum coverage of the available deposit insurance. The target amount is often 99%, or 98%, or 95% or 90%, or other convenient percentage of the coverage limitation. In the case of FDIC insurance, a preferred target amount is 95% of the coverage limitation of \$100K, or \$95K; other exemplary target amounts may be

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\$90K or \$98K or \$99K or other amount. Less preferably, the target amount may be 100% of the coverage limitation.

Also, the following abbreviations may be used in this specification and figures: "acct." for account; "cust." for customer; "DDA" for demand deposit account; "inst." for financial institution (such as a bank); "MM" for money market; "MMDA" for money market demand account; "xaction" for transaction.

Now, in view of the above-described banking environment, this invention's objectives are achieved as follows. Generally, the administrator (or operating entity) of an embodiment of the systems and methods of this invention provides account services to multiple participating customers (at least one) with accounts at multiple participating financial institutions (at least two). The administrator establishes and maintains in each participating bank one of the above-described MMDA-DDA account pairs and allocates and invests participating customer funds in the interest-earning MMDA accounts in amounts guided by objectives and rules selected so that objects of this invention are achieved.

A first preferred objective is to allocate and invest customer funds so that each customer has available a substantial maximum amount of deposit insurance available in each particular embodiment consistent with the practicalities of financial transaction processing. Where the available deposit insurance has fixed coverage limits in each participating institution, this objective may be achieved by a rule according to which no more than the target amount of funds (alternatively, no more than the insurance coverage limitation) is invested in each participating institution (or in an associated or affiliated institution). By the use of a target amount, the methods of this invention are able to practically provide a substantial maximum of deposit insurance for a customer. It is preferably that the target amount be as close to the coverage maximum as is consistent with practical transaction administration and processing. If full insurance coverage is not possible, because, for example, the customer account balance exceeds the coverage limitation (or the target amount) times the number of participating institutions, then excess uninsured funds are preferably kept at the customer's primary institution.

More generally, this invention's first objective is to reduce each customer's risk of loss. Preferably deposit insurance is available, and this objective is achieved by the above-described rules which fully insure a customer's deposits if possible. Where deposit insurance is not available for some or all of a customer's deposits, risk may be reduced by dividing a customer's deposits across such participating institutions that are financially independent of each other. For example, customer deposits in excess of the maximum insurance available in an embodiment of this invention, may be spread evenly across the participating institutions. Alternatively, customer deposits may be invested according to rules prescribed by the that customer. For example, the customer may provide a list of participating institutions prioritized for allocation and investment.

A second preferred objective is not to impact each participating institutions total deposited funds. A corresponding rule is that for any transfer of customer funds out of a financial institution to reduce risk of loss, there should be a substantially equal transfer of other participating funds into this institution. For example, if the customers of a participating bank have placed \$100M into the program, then \$100M in deposits should remain on the bank's balance sheet, whether these are deposits of the bank's own customers or of customers of other participating banks (or financial institutions).

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This objective is advantageous to institutions which use their deposits for important business purposes, for example, for funding loans.

Investment and allocation of participating funds may also be guided by secondary objectives which should be satisfied if possible without jeopardizing the two previous preferred objectives. One preferred secondary objective advantageous to participating institutions is to not allocate a customer's funds away from that customer's primary bank unless necessary. For example, customers accounts with balances less than \$95,000 should not be allocated to other participating banks. However, meeting the primary (preferred) objectives may make meeting this secondary objective impossible in certain situations. Also, when a customer's balance cannot be fully insured, the excess uninsured funds should be retained in the primary institution. Alternatively, a secondary objective advantageous to customers is to reduce risk by allocating a customer's deposits substantially equally among all independent participating institutions.

In preferred embodiments the allocation and investment processes carry out the invention's objectives with both reasonable accuracy and efficiency by acting in a transaction-by-transaction fashion. Customer funds may be allocated to reduce risk on a transaction-by-transaction basis, with each customer transaction being allocated to a single institution (which may be the primary institution). Transactions are customer withdrawals and deposits of all kinds. To maintain the integrity of each institution's total deposits, the present invention may itself initiate transfer of customer funds between institutions. Most preferably, part of all of customer's funds in one institution may be transferred to another institution. In this preferred embodiment, each institution's deposits can be exactly maintained. Invention processing preferably occurs on a regular basis, for example, on an hourly, or a daily, or a weekly basis, and the like, but the invention is not so limited. In most embodiments, it is expected that processing is performed each business day.

In a preferred embodiment, investment of customer funds to reduce risk is coupled to transferring funds between institutions to preserve total deposits, and both are triggered daily to process the batch of customer transactions received for that day. For example, as each customer transaction is processed, it is assigned to the customer's composite account, which represents all transactions that have posted to the client's account. After being posted to the composite accounts, transactions are then allocated to a selected sub-account, each sub-account being associated with one participating bank and representing that portion of the customer's funds in that participating bank. If this assignment would cause that customer's allocated funds to exceed the target amount in that participating bank, then the transaction is assigned to a sub-account associated with another participating bank in order to maintain or maximize deposit insurance for that customer. After all transactions have been assigned, funds are re-allocated between banks without compromising the customers' deposit insurance so that each bank's total participating deposits equals the total participating deposits of its own customers. Preferably, customer funds are re-allocated only between secondary banks, and are not transferred out of the customer's primary bank.

The methods of this invention are performed by systems including such data processing components and facilities as are understood in the art to be necessary or preferred for performing such financial methods. These system receive and post customer transactions, allocate and invest customer funds in participating institutions, issue commands and requests to cause funds transfers among institutions, includ-



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ing in person requests to move funds from a MMDA in a participating (or affiliated or associated) bank to its paired DDA, and track and store records for transactions, fund transfers, and fund allocations in a database.

These system preferably inter-operate with financial systems of the participating institutions for the exchange of necessary data and commands, and may inter-operate differently with different institutions. Generally, inter-operation with institutions may be arranged in one of two configurations. In a first configuration known as a sweep-type arrangement, the systems of this invention inter-operate on the behalf of a participating institution's customers primarily with the systems of that institutions alone (and not with external systems). The institution's own systems then interface to external payment and funds transfer networks on the behalf of its customers, collect their transactions, settle transaction with the external networks, and then provide participating customer transactions to systems of this invention, for example, as daily transaction files. The systems of this invention then receive, allocate, and invest transactions for the institution's participating customers, and inter-operate with the institution's systems to cause funds transfers between the institution and the other participating institutions to preserve deposit positions.

In one variation of this configuration, the institution maintains its own accounts (for example, DDA accounts) for participating customers with minimum balances targeted to cover customers' observed and expected deposit and payment patterns. For example, the target minimum balance may be a percentage based on past account use of the total balance. Customer account funds in excess of these target minimum balances are swept to and from the systems and accounts of this invention for management by the methods of this invention.

In a second configuration, the systems of the present invention take a more active role in the management of participating customer accounts at a participating institution. Here, this invention's systems directly interface to external payment and funds transfer networks on behalf of the institution's participating customers and collect customer transactions. These systems may then settle on the behalf of the institution with some or all of the external financial networks, or assist the institution to do so, and will thereby directly accumulate daily customer transaction files for allocation and investment among the participating (or affiliated or associated) banks.

Also institutional systems and the system of this invention may inter-operate in overlapping configurations. The participating institution may collect and settle transactions with some external financial networks, while the invention performs these functions with other financial networks. Here, transaction files from the institution may be merged with transaction files accumulated by this invention's systems prior to funds allocation. This invention may inter-operate with different participating institutions in the same embodiment according to either configuration.

#### 4. BRIEF DESCRIPTION OF THE FIGURES

The present invention may be understood more fully by reference to the following detailed description of the preferred embodiments of the present invention, illustrative examples of specific embodiments of the invention and the appended figures in which:

FIG. 1 illustrates exemplary account structures maintained by this invention;

FIG. 2 illustrates periodic processing performed by this invention;

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FIG. 3 illustrates file-processing steps of the periodic processing of this invention;

FIG. 4 illustrates post-to-sub-account steps of the periodic processing of this invention;

FIG. 5 illustrates re-allocation-processing steps of the periodic processing of this invention; and

FIG. 6 illustrates exemplary systems for practicing the present invention.

#### 5. DETAILED DESCRIPTION OF THE PREFERRED EMBODIMENTS

Preferred embodiments of the methods and systems of the invention summarized above are next described. Although the following description is primarily directed to embodiments where the participating financial institutions are banks, the participating financial institution may be non-banks (e.g., broker/dealers, investment advisory firms, and so forth) that are associated or affiliated with a bank as described above. Also, although customer accounts may be described as DDA accounts, it is understood that customer accounts may also be at non-banks and then may have characteristics different from DDAs in banking institutions.

##### Account Structures in the Preferred Embodiments

In preferred embodiments, the present invention establishes and maintains linked administrator and customer accounts in order to efficiently perform its processing. FIG. 1 illustrates exemplary account structures for a number, N, of customers at three financial institutions.

In particular, the accounts above separator line 3 represent for customers who are participating in this invention their managed accounts at their primary participating financial institutions. Accounts displayed between separator lines 1 and 3 are registered or related to specific customers at the participating institutions, are used by the administrator according to the methods of this invention to manage the customer's participating funds. Records for these accounts are stored in this invention's databases (also referred to as the "administrator databases"). Specifically, a customer's composite account (one only) represents that customer's total funds managed by this invention, while each sub-account of a customer's (one or more) represents the portion of that customer's managed funds held in the participating financial institution associated with the sub-account, where each sub-account is associated with one participating financial institution.

Finally, accounts displayed below separator 1 are registered to the administrator (or operating entity) of an embodiment as agent for the participating customers ("administrator accounts"). These accounts are each in a bank associated with one participating financial institution, which holds the actual funds represented by the account, and are managed by the administrator according to the methods of this invention. Records for these accounts are also stored in the administrator's databases. Funds of all the customer sub-accounts associated with each participating institution are held by the administrator (as agent for the customers) in the administrator accounts in the associated or affiliated banking institution. (Where the participating institutions are banks, the bank is its own "associated" institution.) Although the present description focuses on embodiments with one or two administrator accounts per participating financial institution, in other embodiments the administrator may maintain a number of such accounts in each institution as is convenient.

Considering first the administrator accounts (below separator line 3), this invention establishes and maintains in each

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participating financial institution (or its associated banking entity) an interest-earning and insured MMDA account paired with a corresponding coupled DDA, the latter without withdrawal restrictions. The MMDA and DDA of each account pair are identically registered in each participating (or associated or affiliated) bank, for example as "Administrator as Agent for the Designated Customers" (or "Operating entity name as Agent for the Designated Customers," or a name with equivalent legal effect). FIG. 1 illustrates MMDA-DDA account pairs 5, 7, and 9 held in the three separate participating financial institutions, institutions 1, 2, and 3.

As described above, participating customer deposits are invested (or held) in the MMDAs at the various participating banks where they earn interest until needed to settle customer payments. Each MMDA will usually hold participating funds for a plurality of customers (a "pooled" MMDA). When funds are withdrawn from an MMDA to settle customer payment transactions, this invention, first, generates instructions for a messenger (or other similar person or agent) to request in-person transfer of the funds from the MMDA to the coupled DDA, and second, automatically transfers the funds from the DDA. Funds may be directly deposited into the MMDAs of each account pair, or funds may be indirectly deposited into an MMDA through its coupled DDA.

Thus, for example, to withdraw funds from the pooled MMDA account of pair 9, a messenger is instructed to request financial institution 3 to transfer selected funds from that MMDA to its identically-registered, coupled DDA. Once in the DDA of pair 9, funds may be automatically (that is electronically) withdrawn as necessary. The embodiment of FIG. 1 deposits funds into MMDAs through the coupled DDAs.

Turning next to the customer-related accounts (above separator line 3), FIG. 1 indicates schematically (by "...", a notation used elsewhere in FIG. 1) a plurality of participating, original accounts owned by a plurality of N customers, which are distributed among the three financial institutions. Only two exemplary participating original accounts, original customer account 11 for customer 1 of financial institution 1 and original customer account 13 for customer N of financial institution 3, are explicitly illustrated. Where the participating institution is a bank, the original customer accounts may be configured according to various regulatory possibilities, but typically will be a demand deposit account (DDA) without withdrawal limitations that the customer uses to make payments and to receive deposits. Where the participating institution is not a bank (but is associated or affiliated with a bank at least for the purposes of this invention), the original customer accounts will be appropriate to that institution (e.g., a broker/dealer, investment advisory firm, a insurance company, or other type of financial institution offering customer accounts).

Participating funds (funds that actually participate in the methods of this invention) from each participating (original) customer account is accounted for by a single composite account, which represents total managed funds of that customer wherever the funds are currently deposited/invested. Further, each single composite account will have one or more attached sub-accounts, which represent that customer's funds actually held at the various participating (or affiliated or associated) banks. FIG. 1 (between separator lines 1 and 3) explicitly illustrates composite account 15, representing participating funds from customer account 11, and composite account 17, representing participating funds from customer account 13. Typically, all the funds in a customer's original account will participate in and be managed by this invention. Alternatively, a certain percentage or dollar amount of customer funds may be retained in the customer's original

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account in the original financial institution in order to settle transactions arising between the periodic funds-allocation processing of this invention. This percentage or amount may be determined automatically based on the history of a customer's original account, or may be set by the customer, or may be otherwise determined.

Composite accounts represent both a customer's total funds participating in this invention, and also by means of sub-accounts they also represent the allocation and investment of a customer's participating funds in the MMDA-DDA pairs maintained in the participating financial institutions. In the preferred embodiments, this allocation and investment is represented by one or more sub-accounts (and stored sub-account data) that are conceptually part of each composite account. In other words, if funds of a composite account have been allocated to and invested in the MMDA-DDA pair maintained in a particular financial institution, then that composite account will have a separate sub-account representing this allocation and investment. Because a customer's funds are preferably invested in the customer's original financial institution to the extent possible, each composite account will have a sub-account (referred to as the "primary" sub-account) representing allocation and investment in the primary institution. Where a customer's funds are invested in two or more financial institutions, the composite account will have in addition to its primary sub-account one or more secondary sub-accounts representing investments in the secondary financial institutions. In all cases, the sum of all sub-account balances will equal the balance of the parent composite account.

For example, FIG. 1 illustrates that composite account 15 for client 1 includes 19 three sub-accounts: primary sub-account 21 represents customer 1's funds that are allocated 33 to MMDA-DDA pair 5 in financial institution 1; secondary sub-account 23 represents funds allocated 35 to account pair 7 in financial institution 2; and secondary sub-account 25 represents funds allocated 37 to account pair 9 in financial institution 3. Sub-account 21 is primary because financial institution 1 is customer 1's original and primary institution, while sub-accounts 23 and 25 are secondary. Customer 1 has three sub-accounts to provide deposit-insurance coverage because the composite account balance is between two and three times the deposit-insurance target amount (for example, between \$190-285K). Next, for customer N, composite account 17 includes 27 two sub-accounts: secondary sub-account 29 representing funds allocated 35 to financial institution 2; and primary sub-account 31 representing funds allocated 37 to financial institution 3. Customer 2's sub-accounts provide deposit insurance coverage for balances between the target amount and twice the target amount (for example, between \$95-190K).

This invention may assign to each participating bank a unique code that is then used to identify the primary bank to which each composite and sub-account belongs.

#### Funds Allocation Processing in the Preferred Embodiments

Using this account structure, preferred methods for allocating participating customer funds among the participating banks are now described, commencing with the rules and objectives which guide funds allocations and followed by a preferred implementation of these rules and objectives.

Participating customer funds are generally invested according to a process which implements a number of rules in order to satisfy to the extent possible the goals and objectives of this invention. These rules are generally divided into primary rules and secondary rules. It is highly preferable that any allocation of participating funds always satisfy the primary

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rules. However, depending on the number of customers, the size of their participating funds, their primary banks, and so forth, no allocation of participating funds may be possible which satisfies both the primary and the secondary rules. In these situations, it is preferred that the secondary rules be satisfied to the extent possible.

In preferred embodiments, funds investment or allocation is guided by two (a first and a second) primary allocation rules and by one or more secondary allocation rules. The first primary rule, advantageous to participating customers, is to allocate a customer's participating funds among the MMDA-DDA pairs in order that the customer receives the maximum possible deposit insurance. This is achieved by never allocating a customer's participating funds so that a bank has more than the target amount when another bank is allocated less than the target amount. If the total amount of a customer's participating funds is equal to or less than a maximum insurance threshold, which is equal the target amount (or less preferably, the actual FDIC-maximum-coverage amount) times the number of participating banks, then all that customer's funds can be covered by deposit insurance. In the contrary case, where a customer's participating funds exceed the maximum insurance threshold, then one or more banks must hold more than the target amount of that customer's funds. In both cases, this first primary rule allocates funds so that the each customer's deposit insurance coverage is maximized.

The second primary rule is to allocate all participating funds so that each bank has on deposit an aggregate amount of funds equal to that bank's participating funds, whether or not the deposited funds are owned by customers of that bank. Stated differently, the total of the funds of all participating customers at a participating bank is considered herein as that bank's aggregate or total participating funds. If the funds of one or more customers must be transferred to other participating banks for insurance coverage according to the first primary rule, then according to this second primary rule an equal amount of funds should be transferred from other banks to this bank in order to maintain this bank's aggregate funds on deposit. This rule is advantageous to participating banks, especially smaller banks, because a bank's aggregate deposits can be sources of income, for example, by being available for loans.

Processing of these primary allocation rules by the methods of this invention provides participating banks with the ability to provide increased FDIC insurance over the \$100,000 coverage limits to their bank and/or brokerage customers by allocating and investing their participating customer's balances in excess of \$95,000 (or other target amount) in interest bearing deposit accounts at other banks. The bank does not lose deposits held on its balance sheet, since it receives reciprocal deposits, equal to deposits transferred out, transferred in from other banks participating in this invention. For example suppose bank A has a customer account with a balance of \$300,000. Because FDIC Insurance covers only the first \$100,000 of this balance, by dividing the additional \$200,000 equally between bank B and bank C, bank A can provide this customer with full FDIC coverage. Since bank A does not want to lose the \$200,000 in deposits, the methods of this invention will transfer to bank A \$200,000 in deposits from other participating banks (perhaps, but not necessarily, banks B and C).

Because for non-bank participating institutions the original customer accounts may not be insured, this invention permits these institutions to offer deposit insurance for (some or all) of their customer accounts for the first time. Similarly, this invention provides the participating institution's affiliated or associated bank with total deposits equal to the man-

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aged funds from the participating institution. Thereby both affiliated or associated institution benefit.

One preferred secondary rule aims to never transfer customer funds unless necessary to meet the first two primary rules. For example, it is preferred not to transfer funds for a customer who has less than the target amount (for example, \$95K) of funds on deposit. Also, a customer's funds that exceed the maximum insurance coverage provided by this invention (which equals the target amount times the number of participating banks) should remain in that customer's primary bank. Even though situations may arise where this rule cannot be met for all customers, a preferred allocation method will satisfy this rule for many of the participating customers.

Another preferred secondary rule is that it is preferable for customers of a bank to earn the rate of return specified by the primary bank regardless of which other participating banks hold these customers' funds. This rule may be simply satisfied by allocating the interest earned on investments in each bank's MMDA account to the customers of that bank, wherever their deposits are allocated. Since the allocation methods provide each bank with aggregate total deposits equal to the aggregate total deposits of its participating customers, the total amount of interest it pays will be the equal the amount of interest it would have paid if no participating customer funds had been transferred from the bank. By allocating this amount of interest among its customers in its normal fashion, all these customers will receive their specified and expected rate of interest. Accordingly, it is preferable for participating banks to retain interest earned on their respective MMDAs and to allocate this interest to their own customers.

Aspects of these allocation rules can be illustrated by the following example having two participating banks, Bank A and Bank B, presented in Tables 1-4. Table 1 illustrates hypothetical balances for both banks prior to the allocation processing of this invention according to which Bank A (B) has \$100M (\$50M) deposited in participating accounts and these account have \$12M (\$9M) of balances in excess of the preferred insurance-coverage target amount of \$95K.

TABLE 1

TOTAL	Bank A	Bank B
Participating deposits	\$100M	\$50M
Balances \$0-95K	\$88M	\$41M
Balances \$95-190K	\$12M	\$9M

Table 2 restates the data of Table 1 in a format identifying at each bank the source of deposits. Table 2 illustrates that before allocation processing, Bank A (B) holds deposits of only Bank A's (B's) own customers.

TABLE 2

TOTAL	Bank A	Bank B
Aggregate deposits	\$100M	\$50M
Accounts with balances \$0-95K		
Cust. of Bank A	\$88M	0
Cust. of Bank B	0	\$41M
Accounts with balances \$95-190K		
Cust. of Bank A	\$12M	0
Cust. of Bank B	0	\$9M

In order that the participating customers are fully covered by deposit insurance (the first primary rule), all account balances

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over \$95K must be moved out of their primary bank to a secondary bank. Table 3 (in rows six and seven) illustrates this reallocation of \$12M (\$9M) of deposits of Bank A's (B's) customers to the MMDA in Bank B (A). Although all customers are now insured, Bank A's total aggregate deposits of \$97M are less than its total participating deposits of \$100M, and Bank B's total aggregate deposits of \$53M exceed its total participating deposits of \$50M. In other words the second primary rule is not met.

TABLE 3

TOTAL	Bank A	Bank B
Aggregate deposits	\$97M	\$53M
Accounts with balances \$0-\$95K		
Cust. of Bank A	\$88M	0
Cust. of Bank B	0	\$41M
Accounts with balances \$95-\$190K		
Cust. of Bank A	0	\$12M
Cust. of Bank B	\$9M	0

Therefore, to satisfy the second primary rule, \$3M must be transferred from Bank B to Bank A. Since no funds from accounts with balances over \$95K (all from Bank A's customers) may be transferred without some of these Bank A customers losing insurance coverage, \$3M in funds from accounts with deposits less than \$95K (all from Bank B's customers) must be transferred. Table 4 (in row 4) illustrates the final allocation meeting both primary rules.

TABLE 4

TOTAL	Bank A	Bank B
Aggregate deposits	\$100M	\$50M
Accounts with balances \$0-\$95K		
Cust. of Bank A	\$88M	0
Cust. of Bank B	\$3M	\$38M
Accounts with balances \$95-\$190K		
Cust. of Bank A	0	\$12M
Cust. of Bank B	\$9M	0

In this example the secondary rule is violated. Certain customers of Bank B whose accounts have a balance less than \$95K must have funds transferred from their primary bank even though this is not preferred. Due to a greater need for increased deposit insurance coverage by Bank A, certain Bank B customers that do not require increased deposit insurance have had their accounts transferred to Bank A in order to meet the two primary objectives.

Now the preferred processes implementing these rules and objectives will be described. Generally, these processes perform funds allocation in a manner that sufficiently approximates an exact solution to the rule-constrained funds allocation problem; preferably, the funds allocation satisfies exactly the allocation rules. The allocation process is usually performed on a regular basis with a frequency determined by characteristics of the participating customers and financial institutions. In the case of retail customers of banks and similar institutions, allocation processing is preferably performed on a daily or twice-daily basis during the business week. In situations where customer transactions are relatively infrequent, processing may be performed weekly or monthly. In other situations where typical customer transactions are com-

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parable to the size of the target amount, then more frequent, even transaction-by-transaction processing, processing may be advantageous.

FIG. 2 illustrates in outline a preferred embodiment of regular processing, however frequently performed. After regular processing is triggered and commences 51, its first activities are to receive transaction data for customer transactions that have occurred since that last regular processing 53. These transactions will in most cases require funds re-allocation because customer balances are changed. Transactions may be received from the participating financial institutions, usually in batches such as transaction files. Alternatively, transaction may be received directly by the methods and system of this invention from external transaction sources, such as payment and funds transfer networks, and stored in batches or files for later processing. Once transaction batches or files have been received for all participating customers, they are initially processed 55 and applied to customer composite accounts stored in system databases.

Steps 57 and 59 are the heart of the regular funds allocation process. Step 57 first posts all received customer transactions to customer composite accounts, and then allocates the posted transactions to customer sub-accounts in a manner that provides full deposit-insurance coverage (or a maximum of coverage if full coverage is not possible). After step 57, although the first primary rule is satisfied, the second primary rule may not be satisfied: one or more individual participating institutions may have total aggregate deposits that are more or less than the participating deposits of the own customers (referred to as "out of balance"). Accordingly, step 59 reallocates funds in customer sub-accounts among the participating institutions to insure that the institutions are brought into balance. After transaction allocation processing of step 57 and sub-account re-allocation processing of step 59, instructions are generated 60 and transmitted to cause transaction settlement and funds transfer between participating institutions. Regular processing terminates at step 61.

In alternative embodiments, the principal steps, receiving transaction data, allocating transactions, and re-allocating sub-account funds, may be performed in different orders. For example, if the participating institutions may tolerate being out of balance to a certain degree, then receiving transaction data and allocating transactions may be repeatedly performed 63 in a regular fashion as above while sub-account-fund re-allocation is performed only when the out of balance condition exceeds the tolerable degree.

Next, these individual processing steps illustrated in FIG. 2 will be described in more detail with reference to FIGS. 3, 4, and 5. First, FIG. 3 illustrates file processing step 55 in more detail. This processing commences at step 71, and directly tests 75 for further transaction files 73 to process. If all received transaction files have already been processed, file processing exits 77. Otherwise, file processing tests 79 whether the input data relates to the opening (or availability) of a new participating customer account. If so, the appropriate data structures necessary to manage this account are opened and initialized 81 in the invention's databases. The new data structures include, at least, a new composite customer account and at least one primary sub-account. Secondary sub-accounts may also be opened and initialized at this time if desired. Also, if the new account indication has been received directly by the administrator, it may be necessary to open directly or indirectly a new customer account with the primary financial institution. Otherwise, if the input data relates to daily customer transactions, then these transaction are applied 83 to the customer composite accounts stored in the invention's databases. Transaction are applied or posted in

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a standard manner as known in the art by recording transaction details in appropriate ledgers along with current balance updates.

After received transactions are applied 55 (FIG. 2) to composite accounts stored in the administrator database, they are allocated and posted to 57 the customer sub-accounts, the balances of which indicate the amount of a customer's funds in each participating institution. FIG. 4 illustrates transaction allocation processing in more detail. After this processing commences at 91, it tests for another unprocessed composite account 95 present in administrator database 93 and processes it if one is present; otherwise transaction allocation processing exits 97. All composite accounts in the administrator database are thereby processed. As illustrated, preferred allocation processing is generally divided into two parts, a first part which processes deposit transactions (or other types of transactions that increase customer composite account balances) 115 followed by a second part which processes withdrawal transactions (or other types of transactions that decrease customer composite account balances) 117. In alternative embodiments the processing order of deposit and withdrawal transactions may be reversed; further, the processing of deposit and withdrawal transactions may be interleaved in the order in which they are retrieved from the composite account.

Deposit transaction processing 115 generally seeks to add new deposits to a customer's primary sub-account in the customer's primary institution if consistent with maximum deposit insurance. Otherwise, new deposits are added to secondary sub-accounts to achieve maximum deposit insurance. Therefore, the existing balance in a customer's composite account (or in the customer's primary sub-account) is tested 99. If the existing balance plus the new deposit will not exceed the target coverage amount, then processing branches to the left at test 99, and the new deposit may be allocated 103 to the customer's primary sub-account. On the other hand, if the existing balance in the primary sub-account plus new deposit exceeds the target coverage amount, processing proceeds to test 101, where the customer's secondary sub-accounts are tested to determine if there is at least one secondary sub-account with an existing balance so that after adding the new deposit to the existing balance the sub-account will remain within the target amount. If there is at least one such secondary sub-account, processing branches at test 101 to the right, and the new deposit is allocated 107 to that sub-account. Also, this right-hand branch is taken where, although all existing secondary sub-accounts are too near the target amount, there exists another secondary institution not yet having a secondary sub-account for this customer. Then, a new secondary sub-account may be opened 105 in that secondary institution and the new deposit may be allocated 107 to that new sub-account.

Further, it may happen that a customer has secondary sub-accounts at all secondary institutions none of which are capable of receiving the new deposit without exceeding the target coverage amount. In this case, in those embodiments where it is preferred to retain a customer's deposits in the customer's primary institution, the left-hand branch from test 101 is taken, and the new deposit is allocated 103 to the primary sub-account. On the other hand, in those embodiments where it is preferred to distribute a customer's excess balance (over the target amount times the number of participating financial institutions) among the secondary institutions (or banks) to reduce risk, processing will branch from test 101 to allocate the new deposit to that secondary sub-

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account 107 having the smallest existing balance or to the primary sub-account 103 if that account has the smallest current balance.

Withdrawal transaction processing 117, conversely to deposit processing, generally seeks to remove funds from a customer's secondary financial institutions so that the customer's primary institution holds the most customer funds consistent with maximum deposit insurance coverage. Accordingly, withdrawal processing tests 109 if the customer has any secondary sub-accounts with balances sufficient to satisfy the new withdrawal transaction. If so, processing branches to the right at test 109, and the withdrawal is posted 113 to that secondary sub-account. Where even distribution of a customer's excess balance evenly among the secondary institutions (or banks) is preferred, new withdrawals may be allocated to the secondary sub-account with the largest balance. Further, if no single sub-account has a sufficient existing balance to cover a new withdrawal, as much as possible of the withdrawal may be covered from two or more (or all) sub-accounts. In this case, one or more (or all) sub-accounts may have be left with zero balances. If the withdrawal cannot be satisfied by reducing all sub-accounts to zero balance, the remainder can be covered by branching to the left and withdrawing funds 111 from the primary account.

Finally, it is often advantageous to split both deposit and withdrawal transactions among sub-accounts, allocating part of a transaction amount to one sub-account and part to another sub-account. For example, this may be guided in order to achieve a better distribution of a customer's excess balances among the secondary sub-accounts or to maximize funds (preferably within the target amount) in the customer's primary sub-account.

Generally, although transaction allocation as described achieves the deposit-insurance-coverage objectives of this invention, it may leave the participating banks or financial institutions out of balance. The second primary objective is that each participating bank be in balance, that is where with the total aggregate of the deposits allocated to each bank equals the total participating deposits of the customers of that bank. The total deposits allocated to a bank equals the sum of the balances of all sub-accounts allocated to and held by that bank, whether or not the sub-accounts are associated with customers of that bank; the bank's total participating funds equals the sum of the balances of the composite accounts of all the customers of that bank. It is convenient in the following to use the term "net\_difference" to stand for the difference of these two sums, namely, the sum of the composite account balances subtracted from the sum of the balances of the allocated sub-account balances. Then a bank is said to be in surplus if its net\_difference is positive; a bank is in balance if its net\_difference is substantially zero; and a bank is in deficit if its net\_difference is negative.

The following example, including three banks, Bank A, Bank B, and Bank C and presented in Tables 5-7, illustrates that the results of transaction allocation may lead to need for funds re-allocation. First, Table 5 illustrates exemplary results of a just-completed transaction allocation for the present processing period. (Parenthesis enclosing an amount indicates that the amount is negative.) Here, Bank A started with \$100M in aggregate total deposits as of the end of the previous regular processing. Bank A's transaction file for the current processing day is equal to \$8M. Therefore, it has increased its aggregate deposit balances by \$8M. The transaction allocation for the present processing period leads to a net of \$8M in new deposits allocated to all the sub-accounts held at Bank A. Of this \$8M of new net deposits, customers of Bank A have generated a net of \$8M of new deposits; cus-

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tomers of Bank B have generated \$2M of net withdrawals; and customers of Bank C have generated \$2M of new deposits. These nets are consistent because  $\$8M = \$8M - \$2M + \$2M$ . Therefore, Bank A's net difference is zero. The data for Banks B and C are similarly interpreted. Note that the transactions allocated and posted to the sub-accounts held at a specific bank may or may not be in the transaction file sent by that bank, since not all sub-accounts held at the bank are for customers of the bank.

TABLE 5

	BANK		
	A	B	C
Bank deposits as of the previous day	\$100M	\$50M	\$30M
Net transactions allocated to bank from all received transaction files	\$8M	\$6M	\$3M
Breakdown of net transactions by customers of bank	A = \$8M; B = (\$2M); C = \$2M	A = (\$2M); B = \$6M; C = \$2M	A = \$2M; B = (\$1M); C = \$2M

Next, Table 6 presents that same data as Table 5 organized by the customers of each bank instead of by bank.

TABLE 6

Customers of BANK	Total net transactions of bank	Net transactions in sub-accounts allocated to BANK		
		A	B	C
A	\$8 M	\$8M	(\$2M)	\$2M
B	\$3 M	(\$2M)	\$6M	(\$1M)
C	\$6 M	\$2M	\$2M	\$2M
Total net transactions for sub-accounts allocated to this bank		\$8M	\$6M	\$3M

For example, customers of Bank B have generated a net deposit of \$3M, which results in an increase of the sum of their composite accounts by this amount. This net represents \$2M of net withdrawals from Bank-B's secondary sub-accounts that are held at Bank A, \$6M of net deposits in Bank-B's primary sub-accounts held at Bank B, and \$1M of net withdrawals from Bank-B's secondary sub-accounts that are held at Bank C. Again, these nets are consistent because  $\$3M = -\$2M + \$6M - \$1M$ . The data for customers of Banks A and C are similarly interpreted.

Finally, Table 7 illustrates determination of the surplus/deficit status of the participating bank and the funds re-allocation needed (assuming the banks were all initially in balance). For example, Bank C has experienced a \$3M increase in aggregate participating deposits, because \$3M in customer transactions were allocated to it as indicated in Table 5. However, Table 6 indicates that the customers of Bank C generated \$6M in net deposits. Therefore, Bank C has a negative net difference, or deficit, of \$3M; \$3M needs to be transferred into Bank C from Banks A and B so that its aggregate deposits equals the aggregate deposits of its customers. Similar interpretation of the results for Banks A and B indicate that Bank A remains in balance while Bank B has a positive net difference, or surplus, of \$3M. All the banks will be in balance again after a funds transfer of \$3M from Bank B to Bank C.

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TABLE 7

BANK	A	B	C
Aggregate bank deposits on previous day	\$100M	\$50M	\$30M
Change in sub-accounts attached to the bank at end of this day (= net transactions allocated to this bank)	\$8M	\$6M	\$3M
Change in aggregate deposits of all customers of this bank (= net transactions of all customers of this bank)	\$8M	\$3M	\$6M
Status (net_difference)	Balanced	Surplus of \$3M	Deficit of \$3M
Re-allocation needed	\$0	(\$3M)	\$3M

In summary, funds re-allocation is usually needed because the net transaction balances allocated to a bank usually does not equal the net transaction balances of the bank's customers (or customers of its affiliated or associated participating financial institution).

Now returning to this invention's processing methods, FIG. 5 illustrates funds re-allocation processing, step 59 (FIG. 2), in more detail in view of the prior example. After commencing 131, classification step 135 retrieves data from administrator databases 133, which store composite account and sub-account records, and classifies all participating financial institutions (for example, participating banks) as being in surplus, in balance, or in deficit according to the net difference definition above. This classification is processed in a fashion analogous to the exemplary classification of Banks A, B, and C in the prior example. After surplus/balance/deficit classification 135, re-allocation processing determines 137 if there are any institutions in surplus. Processing exits 139 if no further institutions are in surplus, because if there are no institutions in surplus, then all institutions are in balance. Any institution that is in deficit means that there are one or more other institutions in surplus, and conversely. (Similarly, processing may determine if there are any institutions in deficit.) However, if at least one institutions is still in surplus (and thus one or more are still in deficit), re-allocation processing must continue.

Re-allocation processing seeks to transfer sub-account balances from surplus institutions to deficit institutions until all are in balance. Secondary sub-accounts are preferentially transferred out of a surplus institution to a deficit institution; however, if transfer of all secondary sub-accounts does not achieve balance, then primary sub-accounts, that is sub-accounts for customers of the surplus institution, are also transferred. Therefore, processing next finds 141 secondary sub-accounts at a surplus institution (which it should be recalled are sub-accounts for individuals who are not customers of that surplus institution). Certain secondary sub-accounts are "fixed," and may not be transferred to an in-deficit institution. For example, a candidate secondary sub-account may not be transferred if transfer of part or all of its current balance will decrease insurance coverage for that sub-account's owner. This will occur, for example, if the existing balances of that customer's sub-accounts at the currently in-deficit institutions are too close to (or are at) the target amount, and cannot accommodate funds from the candidate secondary sub-account. Test 143 bypasses all such "fixed" sub-accounts.

Having found a sub-account eligible for transfer, all of part is transferred 145 to an in-deficit institution. If the current in-surplus institution may be balanced by transfer of only a part of the eligible sub-account, the necessary part is transferred leaving the institution now in balance. Otherwise, the entire sub-account is transferred. Alternatively, as much as

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possible of the sub-account is transferred without causing a decrease in that customer's insurance coverage. If the current in-surplus institution is now in balance 147, re-allocation processing checks again 137 for another in-surplus institution. However, if transfer of all possible funds from secondary sub-accounts does not balance the current in-surplus institution, then funds will be transferred from one or more primary sub-accounts. Primary sub-accounts are selected and processed for transfer 149 in a fashion analogous to that for secondary sub-accounts. However, transfers that will decrease insurance coverage for the account's owner are not allowed.

Transfers of funds preferably are determined to leave the financial institutions exactly in balance with a net difference of zero. However, in certain embodiments it may not be possible to exactly balance institutions because of, for example, funds transfer restrictions, timing differences between transaction processing and funds transfer, and the like. In such embodiments, financial institutions should be substantially in balance by having the net difference to be no more than 5%, or 2%, or 1%, or 0.5%, or 0.1% of the total customer account balances.

Additionally, the methods of this invention preferably generate customer statements that display the customer transaction activity posted to the composite account along with the customer's balances (in sub-accounts) held at each participating financial institution or bank. These statements are usually generated monthly.

#### Systems Preferred for this Invention

FIG. 6 generally illustrates exemplary administrator systems of this invention, which, along with certain external system with which the administrator systems cooperate, are for performing the above-described methods of this invention. Computer system 201, including processing unit, memory, communication interface, user interfaces, and the like, is configured with a performance and reliability acceptable for financial processing as is known in the arts. For example, such computers along with industrial-strength operating software are available from IBM and other well known manufacturers. Administrator systems also include database storage 202, preferably highly reliable, for storing account data, including composite account data, sub-account data, MMDA-DDA account-pair data, and such other administrative data needed for customer funds management.

The methods of this system are programmed, preferably in a suitable, commercial or financial programming language, and translated into machine instructions which cause computer 201 and its operating software and database 202 to perform this invention's methods. This invention also includes program products comprising computer readable media containing encoded representations of such machine instructions. Such computer readable media are well known in the art (and include network distribution).

In order to perform this invention's methods, the administrator systems are preferably in communication with external systems which provide important data, such as sources 204 of customer transaction data. This invention includes processing, posting, and allocation of various types of customer transactions, for example, ACH credit/debit transactions, debit and credit card transactions, sweep transaction from participating financial institutions, check/draft payments and deposits, FED wire transfers, and transactions originating over the telephone, the internet, in person, and so forth. Generally, as known in the art, different transaction types origi-

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nate from different external systems, and may arrive transaction-by-transaction or may be batched into periodic (e.g., daily) transaction files.

In most embodiments, the administrator systems are in communication with external systems 203 of the participating financial institutions. For participating banking institutions, both customer account information and MMDA-DDA account-pair information may be exchanged with their external systems 203. For other types of participating financial institutions, primarily customer account information is exchanged, while related MMDA-DDA account-pair information is exchanged with the systems of that institutions affiliated or associated bank. In certain embodiments, one or more of the participating financial institutions may directly receive customer transactions and then exchange them with the administrator systems as a batch file. Accordingly, communications between the administrator systems, the transaction source systems, and the participating financial institution systems may be direct or indirect.

Finally, communication links 205a and 205b between these systems may be of the many types known in the art. They may be private links that are used only for the purposes of this invention. Alternatively, these links may be shared as part of private clearing house networks, of bank card networks, of Federal Reserve Board networks, and the like. As also known in the art. These links may be configured as point-to-point links, or a networks, or a networks of networks, such as the Internet.

The invention described and claimed herein is not to be limited in scope by the preferred embodiments herein disclosed, since these embodiments are intended as illustrations of several aspects of the invention. Any equivalent embodiments are intended to be within the scope of this invention. Indeed, various modifications of the invention in addition to those shown and described herein will become apparent to those skilled in the art from the foregoing description. Such modifications are also intended to fall within the scope of the appended claims.

A number of references are cited herein, the entire disclosures of which are incorporated herein, in their entirety, by reference for all purposes. Further, none of these references, regardless of how characterized above, is admitted as prior to the invention of the subject matter claimed herein.

#### What is claimed is:

1. A method for managing funds for a plurality of primary customers of a first financial institution that are participating in a program whose funds were accepted for deposit in respective primary customer accounts held in the respective names of the respective primary customers at the first financial institution, comprising:

- (a) maintaining one or more FDIC-insured and interest-bearing aggregated deposit accounts at the first financial institution;
- (b) maintaining one or more FDIC-insured and interest-bearing aggregated deposit accounts at each of one or more different financial institutions;
- (c) maintaining or having maintained or accessing by one or more computers an electronic database, on one or more computer-readable media, comprising information on a balance of funds held by each respective primary customer of the first financial institution in the respective primary customer account in the first financial institution and an amount of such funds held in the one or more aggregated deposit accounts in the first financial institution and an amount or respective amounts of such funds held in the one or more different financial institutions;



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- (d) receiving electronic client transaction data describing debit and/or credit transactions made by a plurality of the primary customers against their respective primary customer accounts;
  - (e) determining or having determined or receiving electronically for each of the plurality of the primary customer accounts of the first financial institution an updated balance of funds in the respective primary customer account resulting from one or more debit and/or credit transactions associated with the respective primary customer received in the electronic client transaction data;
  - (f) determining by one or more computers, for each of a plurality of the respective primary customer accounts of the first financial institution, a respective excess amount relative to a specified amount;
  - (g) allocating a respective excess amount associated with each of a plurality of respective primary customer accounts of the first financial institution to one or more of the aggregated deposit accounts in a different one or more of the financial institutions;
  - (h) determining by one or more computers a first amount of funds comprised of funds associated with a plurality of the respective primary customers of the first financial institution allocated or to be allocated to one or more of the aggregated deposit accounts in the different one or more of the financial institutions, wherein the first amount of funds at least approximates a total of the respective excess amounts determined for the respective primary customer accounts of the plurality of the primary customers of the first financial institution;
  - (i) determining by one or more computers a second amount of funds comprising funds associated with one or more primary customer accounts of one or more of the other financial institutions from one or more of the aggregated deposit accounts in one or more of the other financial institutions, with the second amount to be transferred to the first financial institution, with the second amount of funds being based on the first amount of funds;
  - (j) allocating funds associated with the second amount from the one or more primary customer accounts of the one or more of the other financial institutions to the one or more aggregated accounts of the first financial institution;
  - (k) updating or having updated in the electronic database the balance of funds held by respective primary customers of the first financial institution in their respective primary customer accounts and the amount of such funds held in the one or more aggregated deposit accounts in the first financial institution and the amount or amounts of such funds held in one or more aggregated deposit accounts held in the one or more of the different financial institutions based on the allocating steps; and
  - (l) generating and outputting at least one instruction to transfer funds between aggregated deposit accounts based at least in part on results of one or more of the allocating steps.
2. The method as defined in claim 1, wherein the second amount allocated is equal to the first amount.
  3. The method as defined in claim 1, wherein the second amount is greater than the first amount.
  4. The method as defined in claim 1, wherein the second amount is less than the first amount.
  5. The method as defined in claim 1, further comprising: receiving via an electronic communication at least one transaction from an external system, wherein the external system is for ACH credit/debit transactions, or for

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- debit and credit card transactions, or for sweep transactions from financial institutions, or for check/draft payments and deposits, or FED wire transfers, or for transactions originating over the telephone, or the internet for one of the primary customers of the first financial institution who also has funds in one of more of the aggregated deposit accounts in one or more of the other financial institutions; and
  - issuing at least one instruction to transfer funds in accordance with the at least one transaction; and
  - reallocating an amount of funds from one or more of the aggregated deposit accounts at the different financial institutions to the at least one aggregated deposit account in the first financial institution to maximize funds of the one primary customer held in the first financial institution but with the balance of those funds in the first financial institution remaining equal to or less than the specified amount.
6. The method as defined in claim 1, further comprising: receiving via an electronic communication at least one transaction from an external system, wherein the external system is for ACH credit/debit transactions, or for debit and credit card transactions, or for sweep transactions from financial institutions, or for check/draft payments and deposits, or FED wire transfers, or for transactions originating over the telephone, or the internet for one of the primary customers of the first financial institution who also has funds in one or more of the aggregated deposit accounts in one or more of the other financial institutions;
  - selecting one of the aggregated deposit accounts holding funds of the one customer in one of the different financial institutions; and
  - reallocating an amount of funds from the selected aggregated deposit account at the one different financial institution for the at least one transaction.
  7. The method as defined in claim 1, further comprising: transferring or having transferred funds between aggregated deposit accounts based at least in part on results of one or more of the allocating steps.
  8. The method as defined in claim 1, further comprising adding new deposits from a primary customer of the first financial institution to one of more of the aggregated deposit accounts in the first financial institution, unless an amount of funds held by the primary customer in the program in the first financial institution equals or exceeds the specified amount.
  9. The method as defined in claim 1, further comprising: performing the allocation of the second amount only if one or more allocations of first amounts equals or exceeds a threshold amount.
  10. The method as defined in claim 1, wherein the determining an excess amount step comprises determining an excess amount by which a balance of funds in the respective primary customer account exceeds the specified amount.
  11. The method as defined in claim 1, wherein the determining an excess amount step comprises determining an excess amount by which an amount of funds of the respective primary customer account held in the first financial institution exceed the specified amount.
  12. A method for managing funds, in a plurality of financial institutions participating in a program, for a plurality of primary customer accounts of a plurality of primary customers, with each respective primary customer having funds that were accepted for deposit in a primary customer account in the name of the primary customer at one of the plurality of



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financial institutions in the program, with that financial institution referred to as a primary financial institution for that primary customer, comprising:

- (a) maintaining a plurality of FDIC-insured and interest-bearing aggregated deposit accounts, with one or more of the aggregated deposit accounts held in each different one of the financial institutions;
- (b) maintaining or having maintained or accessing by one or more computers an electronic database, on one or more computer-readable media, comprising information on a balance of funds held by each respective primary customer in the respective primary customer account and an amount or respective amounts of such funds held in one or more of the plurality of aggregated deposit accounts in the plurality of financial institutions;
- (c) receiving electronic client transaction data describing debit and/or credit transactions made by the primary customers against their respective primary customer accounts;
- (d) determining or having determined or receiving electronically for each primary customer account an updated balance of funds in the primary customer account resulting from the debit and/or credit transactions associated with the respective primary customer received in the electronic client transaction data;
- (e) determining by one or more computers, for each of a plurality of respective primary customer accounts, a respective excess amount by which a balance of funds in that primary customer account in its respective primary financial institution exceeds a specified amount;
- (f) allocating a respective excess amount associated with each of a plurality of the one or more respective primary customer accounts of the first financial institution to one or more of the aggregated deposit accounts in a different one or more of the financial institutions;
- (g) determining by one or more computers from a plurality of the excess amounts determined from a plurality of primary customer accounts in one of the financial institutions that were or are to be allocated to one or more of the aggregated deposit accounts in one or more of the other financial institutions a first amount;
- (h) allocating by one or more computers to the one financial institution a second amount of funds comprising funds associated with one or more primary customer accounts of one or more of the other financial institutions from one or more of the aggregated deposit accounts at one or more of the other financial institutions, with the second amount based on a difference between a sum of funds deposited in the one or more aggregated deposit accounts of the one financial institution associated with the program and a sum of current balances in all of the primary customer accounts of the primary customers in the program associated with the one financial institution;
- (i) updating or having updated in the electronic database the balance of funds held by each respective primary customer in the respective primary customer account and an amount or respective amounts of such funds held in one or more of the plurality of aggregated deposit accounts in the plurality of financial institutions based on the allocating steps; and
- j) generating and outputting at least one instruction to transfer funds between aggregated deposit accounts based at least in part on results of one or more of the allocating steps.

13. The method as defined in claim 12, wherein the second amount allocated is equal to the difference between the sum

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of current balances in all of the primary customer accounts associated with the first financial institution in the program and funds deposited in the one or more aggregated deposit accounts of the primary financial institution.

14. The method as defined in claim 12, further comprising: receiving via an electronic communication at least one transaction from an external system, wherein the external system is for ACH credit/debit transactions, or for debit and credit card transactions, or for sweep transactions from financial institutions, or for check/draft payments and deposits, or FED wire transfers, or for transactions originating over the telephone, or the internet for one of the primary customers of one of the financial institutions who also has funds in one or more of the aggregated deposit accounts in one or more of the other financial institutions; and

issuing at least one instruction to transfer funds in accordance with the at least one transaction; and

reallocating an amount of funds from one or more of the aggregated deposit accounts at the different financial institutions to the at least one aggregated deposit account in the one financial institution to maximize funds of the one primary customer held in the one financial institution but with the balance of those funds in the one financial institution remaining equal to or less than the specified amount.

15. The method as defined in claim 12, further comprising: receiving via an electronic communication at least one transaction from an external system, wherein the external system is for ACH credit/debit transactions, or for debit and credit card transactions, or for sweep transactions from financial institutions, or for check/draft payments and deposits, or FED wire transfers, or for transactions originating over the telephone, or the internet for one of the primary customers of one of the financial institutions who also has funds in one or more of the aggregated deposit accounts in one or more of the other financial institutions;

selecting one of the aggregated deposit accounts in one of the other financial institutions holding funds of the one customer; and

reallocating an amount of funds from the selected aggregated deposit account at the one different financial institutions for the at least one transaction to the at least one aggregated deposit account in the one financial institution.

16. The method as defined in claim 12, further comprising: transferring or having transferred funds between the financial institutions based at least in part on results of one or more of the allocating steps.

17. The method as defined in claim 12, further comprising: performing the allocation of the second amount only after the difference equals or exceeds a threshold amount.

18. The method as defined in claim 12, further comprising: selecting one of the financial institutions based at least in part on an amount of the difference between a sum of the funds deposited in the one or more aggregated deposit accounts of the one financial institution associated with the program and a sum of current balances in all of the primary customer accounts of the primary customers in the program associated with the one financial institution; and

issuing at least one instruction to transfer funds to the selected one of the financial institutions.

\* \* \* \* \*

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

ISLAND INTELLECTUAL PROPERTY LLC,  
LIDS CAPITAL LLC, DOUBLE ROCK  
CORPORATION, and INTRASWEEP LLC,

Plaintiffs,

v.

PROMONTORY INTERFINANCIAL  
NETWORK, LLC, MBSC SECURITIES  
CORPORATION, DEUTSCHE BANK AG,  
DEUTSCHE BANK TRUST COMPANY  
AMERICAS, and TOTAL BANK SOLUTIONS,  
LLC,

Defendants.

Civil Action No. 09 Civ. 2675 (VM)

**DEUTSCHE BANK AG'S ANSWER  
TO CONSOLIDATED FIRST  
AMENDED COMPLAINT**

**JURY TRIAL DEMANDED**

Deutsche Bank AG ("DBAG"), by and through its undersigned attorneys, respectively files this Answer to the Consolidated First Amended Complaint filed by Plaintiffs Island Intellectual Property LLC ("Island IP"), LIDs Capital LLC ("LIDs Capital"), Double Rock Corporation ("Double Rock"), and Intrasweep LLC ("Intrasweep") (collectively, the "Island Plaintiffs") and Counterclaims against the Island Plaintiffs, as follows.

**ANSWER TO CONSOLIDATED FIRST AMENDED COMPLAINT**

**NATURE OF THE ACTION**

1. DBAG admits only that the Island Plaintiffs purport that this is an action for patent infringement in paragraph 1. DBAG denies any and all remaining allegations of paragraph 1.

A. DBAG admits only that the Island Plaintiffs purport in paragraph 1A of the Consolidated First Amended Complaint that this is an action for patent infringement arising out of Defendant Promontory Interfinancial Network, LLC's ("Promontory"),

Defendant MBSC Securities Corporation's ("MBSC"), Defendant DBAG's, Defendant Total Bank Solutions, LLC's ("TBS"), and Defendant Deutsche Bank Trust Company Americas' ("DBTCA") alleged infringement of U.S. Patent No. 7,509,286. DBAG denies any and all remaining allegations of paragraph 1A.

B. DBAG admits only that the Island Plaintiffs purport in paragraph 1B of the Consolidated First Amended Complaint that this is an action for patent infringement arising out of Defendant Promontory's, Defendant DBAG's, Defendant TBS's, and Defendant DBTCA's alleged infringement of U.S. Patent No. 7,519,551. DBAG denies any and all remaining allegations of paragraph 1B.

C. DBAG admits only that the Island Plaintiffs purport in paragraph 1C of the Consolidated First Amended Complaint that this is an action for patent infringement arising out of Defendant DBAG's, Defendant TBS's, and Defendant DBTCA's alleged infringement of U.S. Patent No. 7,536,350. DBAG denies any and all remaining allegations of paragraph 1C.

2. DBAG only admits that the Island Plaintiffs purport in paragraph 1 of the Consolidated First Amended Complaint that the Consolidated First Amended Complaint asserts claims. DBAG denies any and all remaining allegations of paragraph 2.

A. DBAG admits only that the Island Plaintiffs purport in paragraph 2A of the Consolidated First Amended Complaint that the Consolidated First Amended Complaint asserts claims against Defendant Promontory, Defendant MBSC, Defendant DBAG, Defendant TBS, and Defendant DBTCA arising from their alleged infringement of Claim 1 of U.S. Patent No. 7,509,286, issued on March 24, 2009, and entitled "Systems and Methods for Money Fund Banking with Flexible Interest Allocation" ("the '286 Patent"). DBAG denies any and all remaining allegations of paragraph 2A.

B. DBAG admits only that the Island Plaintiffs purport in paragraph 2B of the Consolidated First Amended Complaint that the Consolidated First Amended Complaint asserts claims against Defendant Promontory arising from its alleged infringement of Claim 18 of U.S. Patent No. 7,519,551, entitled “Systems and Methods for Administering Return Sweep Accounts” (“the ’551 Patent”). DBAG denies any and all remaining allegations of paragraph 2B.

C. DBAG admits only that the Island Plaintiffs purport in paragraph 2C of the Consolidated First Amended Complaint that the Consolidated First Amended Complaint asserts claims against Defendant DBAG, Defendant TBS, and Defendant DBTCA arising from their alleged infringement of Claim 1 of the ’551 Patent. DBAG denies any and all remaining allegations of paragraph 2C.

D. DBAG admits only that the Island Plaintiffs purport in paragraph 2D of the Consolidated First Amended Complaint that the Consolidated First Amended Complaint asserts claims against Defendant DBAG, Defendant TBS, and Defendant DBTCA arising from their alleged infringement of Claim 12 of U.S. Patent No. 7,536,350, issued on May 19, 2009, and entitled “Systems and Methods for Providing Enhanced Account Management Services for Multiple Banks” (“the ’350 Patent”). DBAG denies any and all remaining allegations of paragraph 2D.

3. Responding to paragraph 3 of the Consolidated First Amended Complaint, DBAG admits that purported copies of the ’286 Patent, ’551 Patent, and ’350 Patent were attached to the Consolidated First Amended Complaint. DBAG denies any and all remaining allegations of paragraph 3.

THE PARTIES

4. Responding to paragraph 4 of the Consolidated First Amended Complaint, DBAG, upon information and belief, admits that Island IP is a limited liability company, organized and existing under the laws of the State of Delaware and that its principal place of business is located at 1250 Broadway, Thirty-Second Floor, New York, NY 10001, within this District. DBAG denies any and all remaining allegations in paragraph 4.

5. Responding to paragraph 5 of the Consolidated First Amended Complaint, DBAG, upon information and belief, admits that LIDs Capital is a limited liability company, organized and existing under the laws of the State of Delaware and that its principal place of business is located at 1250 Broadway, Thirty-Second Floor, New York, NY 10001, within this District. DBAG denies any and all remaining allegations in paragraph 5.

6. Responding to paragraph 6 of the Consolidated First Amended Complaint, DBAG, upon information and belief, admits that Double Rock is a corporation organized and existing under the laws of the State of New Jersey and that its principal place of business is located at 1250 Broadway, Thirty-Second Floor, New York, NY 10001, within this District. DBAG denies any and all remaining allegations in paragraph 6.

7. Responding to paragraph 7 of the Consolidated First Amended Complaint, DBAG, upon information and belief, admits that Intrasweep is a limited liability company, organized and existing under the laws of the State of Delaware and that its principal place of business is located at 1250 Broadway, Thirty-Second Floor, New York, NY 10001, within this District. DBAG denies any and all remaining allegations in paragraph 7.

8. DBAG is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 8 of the Consolidated First Amended Complaint, and, accordingly denies the same.

9. DBAG is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 9 of the Consolidated First Amended Complaint, and, accordingly denies the same.

10. Responding to paragraph 10 of the Consolidated Amended Complaint, DBAG admits that Defendant DBAG is a corporation organized and existing under the laws of the Federal Republic of Germany and that DBAG's regional head office is located at 60 Wall Street, New York, New York, 10005, within this District. DBAG denies any and all of the remaining allegations in paragraph 10.

11. Responding to paragraph 11 of the Consolidated Amended Complaint, DBAG, upon information and belief, admits that DBTCA is a corporation organized and existing under the laws of the State of New York and that its principal place of business is located at 60 Wall St., New York, New York 10005. DBAG denies any and all remaining allegations in paragraph 11.

12. DBAG is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 12 of the Consolidated First Amended Complaint, and, accordingly denies the same.

#### JURISDICTION AND VENUE

13. DBAG admits only that paragraph 13 of the Consolidated First Amended Complaint purports that this is an action for patent infringement arising under the patent statutes, 35 U.S.C. § 1 *et seq.* DBAG denies any and all remaining allegations in paragraph 13.

14. Responding to paragraph 14 of the Consolidated First Amended Complaint, DBAG admits that this Court has subject matter jurisdiction over patent claims under 28 U.S.C. §§ 1331 and 1338(a). DBAG denies any and all remaining allegations in paragraph 14.

15. DBAG is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 15 of the Consolidated First Amended Complaint, and, accordingly denies the same.

16. DBAG is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 16 of the Consolidated First Amended Complaint, and, accordingly denies the same.

17. Responding to paragraph 17 of the Consolidated Amended Complaint, DBAG admits that DBAG is subject to this Court's personal jurisdiction because it does business in this District. DBAG denies any and all remaining allegations in paragraph 17.

18. Responding to paragraph 18 of the Consolidated Amended Complaint, DBAG, upon information and belief, admits that DBTCA is subject to the Court's personal jurisdiction for the purpose of this action. DBAG, upon information and belief, also admits that DBTCA offers and operates banking services and that it maintains an office within the State of New York and this District. DBAG denies any and all of the remaining allegations in paragraph 18.

19. DBAG is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 19 of the Consolidated First Amended Complaint, and, accordingly denies the same.

20. Responding to paragraph 20 of the Consolidated Amended Complaint, DBAG admits that venue is proper in this Court pursuant to 28 U.S.C. §§ 1391 and 1400(b).

FACTUAL BACKGROUND

21. DBAG is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 21 of the Consolidated First Amended Complaint, and, accordingly denies the same.

22. DBAG is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 22 of the Consolidated First Amended Complaint, and, accordingly denies the same.

23. DBAG is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 23 of the Consolidated First Amended Complaint, and, accordingly denies the same.

24. DBAG is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 24 of the Consolidated First Amended Complaint, and, accordingly denies the same.

25. DBAG is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 25 of the Consolidated First Amended Complaint, and, accordingly denies the same.

26. DBAG is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 26 of the Consolidated First Amended Complaint, and, accordingly denies the same.

27. DBAG is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 27 of the Consolidated First Amended Complaint, and, accordingly denies the same.



28. DBAG is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 28 of the Consolidated First Amended Complaint, and, accordingly denies the same.

THE PATENTS-IN-SUIT

29. DBAG denies the allegations of paragraph 29 of the Consolidated Amended Complaint.

30. DBAG denies the allegations of paragraph 30 of the Consolidated Amended Complaint.

31. DBAG denies the allegations of paragraph 31 of the Consolidated Amended Complaint.

32. Responding to paragraph 32 of the Consolidated First Amended Complaint, upon information and belief, DBAG admits that Island IP is a wholly-owned subsidiary of Double Rock and that it is the owner of all rights, title and interest in the '286 Patent, the '551 Patent, and the '350 Patent. DBAG denies any and all remaining allegations of paragraph 32.

33. Responding to paragraph 33 of the Consolidated First Amended Complaint, DBAG, upon information and belief, admits that LIDs Capital is a wholly-owned subsidiary of Double Rock. DBAG is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of paragraph 33 of the Consolidated First Amended Complaint, and, accordingly denies the same.

34. Responding to paragraph 34 of the Consolidated First Amended Complaint, DBAG, upon information and belief, admits that Intrasweep is a wholly-owned subsidiary of Double Rock. DBAG is without knowledge or information sufficient to form a belief as to the

truth of the allegations of paragraph 34 of the Consolidated First Amended Complaint, and, accordingly denies the same.

35. DBAG is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 35 of the Consolidated First Amended Complaint, and, accordingly denies the same.

THE PROMONTORY AND DREYFUS INFRINGING PRODUCTS

36. DBAG is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 36 of the Consolidated First Amended Complaint, and, accordingly denies the same.

37. DBAG is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 37 of the Consolidated First Amended Complaint, and, accordingly denies the same.

38. DBAG is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 38 of the Consolidated First Amended Complaint, and, accordingly denies the same.

39. DBAG is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 39 of the Consolidated First Amended Complaint, and, accordingly denies the same.

40. DBAG is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 40 of the Consolidated First Amended Complaint, and, accordingly denies the same.

41. DBAG is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 41 of the Consolidated First Amended Complaint, and, accordingly denies the same.

42. DBAG is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 42 of the Consolidated First Amended Complaint, and, accordingly denies the same.

43. DBAG is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 43 of the Consolidated First Amended Complaint, and, accordingly denies the same.

THE DEUTSCHE DEFENDANTS ALLEGEDLY INFRINGING PRODUCTS

44. Responding to paragraph 44 of the Consolidated First Amended Complaint, DBAG, upon information and belief, admits that TBS operates the “Deutsche Bank Insured Deposit Program” (“Deutsche IDP”) within the United States. DBAG denies any and all remaining allegations of paragraph 44.

45. Responding to paragraph 45 of the Consolidated First Amended Complaint, DBAG, upon information and belief, admits that TBS is a financial data processing company that provides the computer and record keeping services for the Deutsche IDP. DBAG denies any and all remaining allegations of paragraph 45.

46. DBAG denies the allegations of paragraph 46 to the Consolidated First Amended Complaint.

47. Responding to paragraph 47 of the Consolidated First Amended Complaint, DBAG admits that it does not have a license or other authorization from any of the Island

Plaintiffs to practice the claims set forth in the '286 Patent. DBAG denies any and all remaining allegations in paragraph 47.

48. DBAG denies the allegations of paragraph 48 to the Consolidated First Amended Complaint.

49. Responding to paragraph 49 of the Consolidated First Amended Complaint, DBAG admits that it does not have a license or other authorization from any of the Island Plaintiffs to practice the claims set forth in the '551 Patent. DBAG denies any and all remaining allegations in paragraph 49.

50. DBAG denies the allegations of paragraph 50 to the Consolidated First Amended Complaint.

51. Responding to paragraph 51 of the Consolidated First Amended Complaint, DBAG admits that it does not have a license or other authorization from any of the Island Plaintiffs to practice the claims set forth in the '350 Patent. DBAG denies any and all remaining allegations in paragraph 51.

52. DBAG is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 52 of the Consolidated First Amended Complaint, and, accordingly denies the same.

#### COUNT ONE

(By Plaintiffs Island IP, LIDs Capital and Double Rock for Patent Infringement by the Defendant Promontory and Defendant MBSC of the '286 Patent)

53. Responding to paragraph 53 of the Consolidated Amended Complaint, DBAG admits only that the Island Plaintiffs purport to repeat and reallege the allegations of paragraphs

1 through 52 of their claims and DBAG incorporates its responses thereto as if fully set forth herein.

54. DBAG is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 54 of the Consolidated First Amended Complaint, and, accordingly denies the same.

55. DBAG is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 55 of the Consolidated First Amended Complaint, and, accordingly denies the same.

56. DBAG is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 56 of the Consolidated First Amended Complaint, and, accordingly denies the same.

57. DBAG is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 57 of the Consolidated First Amended Complaint, and, accordingly denies the same.

COUNT TWO

(By Plaintiffs Island IP, LIDs Capital and Double Rock for Patent Infringement by the Deutsche Defendants of the '286 Patent)

58. Responding to paragraph 58 of the Consolidated Amended Complaint, DBAG admits only that the Island Plaintiffs purport to repeat and reallege the allegations of paragraphs 1 through 52 of their claims and DBAG incorporates its responses thereto as if fully set forth herein.

59. DBAG denies the allegations of paragraph 59 to the Consolidated First Amended Complaint.

60. DBAG denies the allegations of paragraph 60 to the Consolidated First Amended Complaint.

61. DBAG denies the allegations of paragraph 61 to the Consolidated First Amended Complaint.

62. DBAG denies the allegations of paragraph 62 to the Consolidated First Amended Complaint.

COUNT THREE

(By Plaintiffs Island IP, LIDs Capital and Double Rock for Patent Infringement by Defendant Promontory of the '551 Patent)

63. Responding to paragraph 63 of the Consolidated Amended Complaint, DBAG admits only that the Island Plaintiffs purport to repeat and reallege the allegations of paragraphs 1 through 52 of their claims and DBAG incorporates its responses thereto as if fully set forth herein.

64. DBAG is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 64 of the Consolidated First Amended Complaint, and, accordingly denies the same.

65. DBAG is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 65 of the Consolidated First Amended Complaint, and, accordingly denies the same.

66. DBAG is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 66 of the Consolidated First Amended Complaint, and, accordingly denies the same.

67. DBAG is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 67 of the Consolidated First Amended Complaint, and, accordingly denies the same.

68. DBAG is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 68 of the Consolidated First Amended Complaint, and, accordingly denies the same.

COUNT FOUR

(By Plaintiffs Island IP, LIDs Capital and Double Rock for Patent Infringement by the Deutsche Defendants of the '286 Patent)

69. Responding to paragraph 69 of the Consolidated Amended Complaint, DBAG admits only that the Island Plaintiffs purport to repeat and reallege the allegations of paragraphs 1 through 52 of their claims and DBAG incorporates its responses thereto as if fully set forth herein.

70. DBAG denies the allegations of paragraph 70 to the Consolidated First Amended Complaint.

71. DBAG denies the allegations of paragraph 71 to the Consolidated First Amended Complaint.

72. Responding to paragraph 72 of the Consolidated Amended Complaint, DBAG admits that it has been on notice of a published Application which matured into the '551 Patent since on or about October 18, 2005. DBAG denies any and all remaining allegations of paragraph 72.

73. DBAG denies the allegations of paragraph 73 to the Consolidated First Amended Complaint.

74. DBAG denies the allegations of paragraph 74 to the Consolidated First Amended Complaint.

COUNT FIVE

(By Plaintiffs Island IP, LIDs Capital and Double Rock for Patent Infringement by the Deutsche Defendants of the '286 Patent)

75. Responding to paragraph 75 of the Consolidated Amended Complaint, DBAG admits only that the Island Plaintiffs purport to repeat and reallege the allegations of paragraphs 1 through 52 of their claims and DBAG incorporates its responses thereto as if fully set forth herein.

76. DBAG denies the allegations of paragraph 76 to the Consolidated First Amended Complaint.

77. DBAG denies the allegations of paragraph 77 to the Consolidated First Amended Complaint.

78. DBAG denies the allegations of paragraph 78 to the Consolidated First Amended Complaint.

79. DBAG denies the allegations of paragraph 79 to the Consolidated First Amended Complaint.

PRAYER FOR RELIEF

I. WITH RESPECT TO THE '286 PATENT

A. DBAG denies that the Island Plaintiffs are entitled to the relief requested in Paragraph I.A.



B. DBAG denies that the Island Plaintiffs are entitled to the relief requested in Paragraph I.B.

C. DBAG denies that the Island Plaintiffs are entitled to the relief requested in Paragraph I.C.

D. DBAG denies that the Island Plaintiffs are entitled to the relief requested in Paragraph I.D.

II. WITH RESPECT TO THE '551 PATENT

A. DBAG denies that the Island Plaintiffs are entitled to the relief requested in Paragraph II.A.

B. DBAG denies that the Island Plaintiffs are entitled to the relief requested in Paragraph II.B.

C. DBAG denies that the Island Plaintiffs are entitled to the relief requested in Paragraph II.C.

D. DBAG denies that the Island Plaintiffs are entitled to the relief requested in Paragraph II.D.

E. DBAG denies that the Island Plaintiffs are entitled to the relief requested in Paragraph II.E.

III. WITH RESPECT TO THE '350 PATENT

A. DBAG denies that the Island Plaintiffs are entitled to the relief requested in Paragraph III.A.

B. DBAG denies that the Island Plaintiffs are entitled to the relief requested in Paragraph III.B.

C. DBAG denies that the Island Plaintiffs are entitled to the relief requested in Paragraph III.C.

D. DBAG denies that the Island Plaintiffs are entitled to the relief requested in Paragraph III.D.

80. DBAG admits that the Island Plaintiffs have requested a trial by jury in paragraph 80 of the Consolidated First Amended Complaint.

#### AFFIRMATIVE DEFENSES

##### First Affirmative Defense (Non-Infringement)

81. The Island Plaintiffs are not entitled to any relief against DBAG because DBAG is not infringing and has not infringed, directly, by inducement, contributorily or in any way, any valid claims of the '286, '551, and '350 Patents.

##### Second Affirmative Defense (Invalidity)

82. Upon information and belief, one or more claims of the '286, '551, and '350 Patents are invalid at least for failure to meet the requirements of Title 35 of the United States Code, particularly, but not limited to, 35 U.S.C. §§ 101, 102, 103, and 112.

##### Third Affirmative Defense (Unenforceability)

83. Upon information and belief, and on the basis of conduct in the United States Patent and Trademark Office ("USPTO"), during the prosecution of the applications that matured into the '286, '551, and '350 Patents and other related applications, the Island Plaintiffs

are barred from asserting the '286, '551, and '350 Patents against DBAG for having engaged in inequitable conduct.

A. Failure to Disclose Material Prior Sales and Public Uses

84. Upon information and belief, the Island Plaintiffs, named inventors, or attorneys, agents, or representatives of the Island Plaintiffs who were associated with the prosecution of the applications that matured into the '286, '551 and '350 Patents and other related applications, knowingly and intentionally failed to disclose and made material misrepresentations regarding material prior sales and public uses, including but not limited to, the prior sale and public use of the Reserve Insured Deposits program. These failures to disclose and material misrepresentations were performed with an intent to deceive the USPTO.

85. The '286 Patent, filed on April 11, 2003, is a continuation-in-part of the '350 Patent, filed on March 6, 2003, and of the '551 Patent, filed on February 8, 2002. The '350 Patent is also a continuation-in-part of the '551 Patent. The '286, '551, and '350 Patents are all continuations-in-part of U.S. Application No. 09/677,535 ("the '535 Application"), filed on October 2, 2000. The '535 Application and the '551 Patent also are continuations-in-part of U.S. Patent No. 6,374,231, filed on October 21, 1998 ("the '231 Patent"). The '286, '551, and '350 Patents are therefore related to both the '535 Application and the '231 Patent.

86. Upon information and belief, Double Rock was formerly known as the Reserve Management Corporation ("Reserve"). Upon information and belief, the principals of Reserve were also the principals of a related entity, called The Reserve Funds. Upon information and belief, The Reserve Funds offered a program called Reserve Insured Deposits. Upon information and belief, the Reserve Insured Deposits program is prior art under 35 U.S.C. § 102(b) to the '231 Patent.

87. On September 21, 2001, Reserve filed a trademark application (Ser. No. 76/315,660) with the USPTO for the mark RESERVE INSURED DEPOSITS. Reserve's application specified that the mark was for "financial services, namely, providing insured money market account services," with a first use in commerce on October 9, 1997. On October 18, 2006, Reserve filed a request to change the date of the first use in commerce to December 31, 1997. In support of its request, Reserve attached an October 17, 2006 declaration by Bruce Bent II, which stated that the first use in commerce was actually October 23, 1997.

88. During the prosecution of the '286, '551, and '350 Patents, as well as during the prosecution of the '231 Patent, the Island Plaintiffs, named inventors, or attorneys, agents, or representatives of the Island Plaintiffs who were associated with the prosecution of these patents, submitted an information disclosure statement ("IDS"), in or around March 2007, disclosing an advertisement in the October 1997 issue of the periodical "Mutual Funds" by Reserve that advertised an "FDIC insured money market account with free, unlimited, no minimum checking." Upon information and belief, this advertisement was circulated as early as September 8, 1997. These IDSs included a February 27, 2007 declaration by Bruce Bent II, who was the senior vice president of Reserve at the time and is a named inventor of the '231, '286, '551, and '350 Patents, that stated that the first use in commerce of the Reserve Insured Deposits program was actually October 23, 1997 and that the October 9, 2007 date that was used in the trademark application was an error.

89. Upon information and belief, Bruce Bent II's February 27, 2007 declaration referred to and attached a true copy of the "Mutual Funds" advertisement. Upon information and belief, this advertisement advertised that the Reserve Insured Deposits Accounts offered "high interest (4.26% as of 8/6/97)."

90. Upon information and belief, the Reserve Insured Deposits program was in use in commerce as early as August 1997. In a 2004 report entitled "Brokerage Cash Sweep Options:

The Shift from Money Funds to FDIC-Insured Bank Deposit Accounts,” published by iMoneyNet and sponsored by The Reserve Funds (“iMoneyNet Article”), the report states that “Money fund-inventor The Reserve Funds introduced Reserve Insured Deposits® in August 1997.” Upon information and belief, the Island Plaintiffs, named inventors, or attorneys, agents, or representatives of the Island Plaintiffs who were associated with the prosecution of the ’231, ’286, ’551 and ’350 Patents, knowingly and intentionally failed to disclose the iMoneyNet Article. This constitutes inequitable conduct, which renders the ’286, ’551, and ’350 Patents unenforceable.

91. Upon information and belief, the Reserve Insured Deposits program, as it existed in August 1997, was within the scope of the ’231 Patent and was put on sale and in public use more than one year prior to the filing date of October 21, 1998. Upon information and belief, the Island Plaintiffs, named inventors, or attorneys, agents, or representatives of the Island Plaintiffs who were associated with the prosecution of the ’231 Patent, knowingly and intentionally failed to disclose and made material misrepresentations regarding the sales and public uses of the Reserve Insured Deposits program prior to October 21, 1997. Upon information and belief, the failures to disclose information and material misrepresentations, including, but not limited to, the examples provided in paragraphs 84 through 90, were made with an intent to deceive the USPTO and thus constitute inequitable conduct that would render the ’231 Patent unenforceable. Under the doctrine of infectious unenforceability, this inequitable conduct during the prosecution of the ’231 Patent renders unenforceable later-filed applications, including the applications that led to the ’286, ’551, and ’350 Patents.

**B. Material Misrepresentations Regarding The First Use In Commerce Of The Reserve Insured Deposits Program**

92. Upon information and belief, the Island Plaintiffs, named inventors, or attorneys, agents, or representatives of the Island Plaintiffs who were associated with the filing and prosecution of the application that led to the issuance of the ’286, ’551, and ’350 Patents and

other related applications knowingly and intentionally made material misrepresentations to the USPTO with the intent to deceive the USPTO regarding the first use in commerce of the Reserve Insured Deposits program.

93. Among other things, upon information and belief, on March 10, 2008, the USPTO rejected the application that eventually led to the issuance of the '286 Patent under 35 U.S.C. § 102(b), citing a prior public use of the Reserve Insured Deposits program. In response, in an Amendment dated May 9, 2008, Reserve quoted language from Bruce Bent II's declaration from February 27, 2007, that stated that the first use in commerce was October 23, 1997. This material misrepresentation evidences an intent to deceive the USPTO and constitutes inequitable conduct, which renders the '286 Patent unenforceable.

94. Among other things, upon information and belief, on April 5, 2007, the USPTO rejected the application that eventually led to the issuance of the '551 Patent under 35 U.S.C. § 102(b), and requested information regarding the prior public use of the Reserve Insured Deposits program. In response, in an Amendment dated October 5, 2007, Reserve quoted language from Bruce Bent II's declaration from February 27, 2007, that stated that the first use in commerce was October 23, 1997. This material misrepresentation evidences an intent to deceive the USPTO and constitutes inequitable conduct, which renders the '551 Patent unenforceable.

95. Among other things, upon information and belief, on March 10, 2008, the USPTO rejected the application that eventually led to the issuance of the '350 Patent under 35 U.S.C. § 102(b), citing a prior public use of the Reserve Insured Deposits program. In response, in an Amendment dated May 9, 2008, Reserve quoted language from Bruce Bent II's declaration from February 27, 2007, that stated that the first use in commerce was October 23, 1997. This material misrepresentation evidences an intent to deceive the USPTO and constitutes inequitable conduct, which renders the '350 Patent unenforceable.

C. Failure to Disclose the Original 1983 CMA/ISA Service

96. Upon information and belief, the Island Plaintiffs, named inventors, or attorneys, agents, or representatives of the Island Plaintiffs who were associated with the prosecution of the applications that matured into the '286, '551 and '350 Patents and other related applications, knowingly, and with the intent to deceive the USPTO, failed to disclose material information regarding the Insured Savings Account feature in Merrill Lynch's Cash Management Account Service.

97. Upon information and belief, the first deposit sweep service was developed and offered by Merrill Lynch, Pierce, Fenner & Smith ("Merrill Lynch"). As a broker-dealer, Merrill Lynch offered this service to its brokerage customers at least as early as 1983 as a feature of Merrill Lynch's Cash Management Account ("CMA"), brokerage account with cash management features. Merrill Lynch called this feature the Insured Savings Account ("ISA") (collectively, "Original 1983 CMA/ISA Service"). Upon information and belief, details of the Original 1983 CMA/ISA Service are highly material to several, if not all, of the claim limitations in the '286, '551, and '350 Patents.

98. Upon information and belief, the Island Plaintiffs, named inventors, or attorneys, agents, or representatives of the Island Plaintiffs who were associated with the filing and prosecution of the applications that led to the issuance of the '286, '551, and '350 Patents knowingly and intentionally withheld material information from the USPTO with regards to the Original 1983 CMA/ISA Service, including but not limited to the iMoneyNet Article. The Original 1983 CMA/ISA Service was on sale and/or in public use more than one year prior to the filing dates of the applications that resulted in the '286, '551, and '350 Patents and information about the Original 1983 CMA/ISA Service was material to the patentability of one or more of the claims of the applications that resulted in the '286, '551, and '350 Patents. Upon information and belief, during the prosecution of the applications that led to the '286, '551, and '350 Patents,

with the intent to deceive the USPTO, the Island Plaintiffs, named inventors, or attorneys, agents, or representatives of the Island Plaintiffs who were associated with the filing and prosecution of the applications that led to the issuance of the '286, '551, and '350 Patents were aware of material information about the Original 1983 CMA/ISA Service and failed to disclose material information about the Original 1983 CMA/ISA Service. This constitutes inequitable conduct, which renders the '286, '551, and '350 Patents unenforceable.

D. Failure to Disclose the 2000 CMA 2.0 Service

99. Upon information and belief, the Island Plaintiffs, named inventors, or attorneys, agents, or representatives of the Island Plaintiffs who were associated with the prosecution of the applications that matured into the '286, '551 and '350 Patents and other related applications, knowingly, and with the intent to deceive the USPTO, failed to disclose material information regarding the Merrill Lynch Cash Management Account 2.0.

100. Upon information and belief, at least as early as 1998, Merrill Lynch began developing a second deposit sweep service. Merrill Lynch offered this second service to its brokerage customers at least as early as 2000 under the name Cash Management Account 2.0 ("2000 CMA 2.0 Service"). Upon information and belief, details of the 2000 CMA 2.0 Service are highly material to several, if not all, of the claim limitations in the '286, '551, and '350 Patents.

101. Upon information and belief, the Island Plaintiffs, named inventors, or attorneys, agents, or representatives of the Island Plaintiffs who were associated with the filing and prosecution of the applications that led to the issuance of the '286, '551, and '350 Patents knowingly and intentionally withheld material information from the USPTO with regards to the 2000 CMA 2.0 Service, including but not limited to the iMoneyNet Article. The 2000 CMA 2.0 Service was on sale and/or in public use more than one year prior to the filing dates of the applications that resulted in the '286, '551, and '350 Patents and information about the 2000



CMA 2.0 Service was material to the patentability of one or more of the claims of the applications that resulted in the '286, '551, and '350 Patents. This constitutes inequitable conduct, which renders the '286, '551, and '350 Patents unenforceable.

E. Failure to Disclose And Material Misrepresentations Regarding the Merrill Lynch Banking Advantage Program

102. Upon information and belief, the Island Plaintiffs, named inventors, or attorneys, agents, or representatives of the Island Plaintiffs who were associated with the prosecution of the applications that matured into the '286, '551 and '350 Patents and other related applications, knowingly, and with the intent to deceive the USPTO, failed to disclose material information regarding the Merrill Lynch Banking Advantage Program.

103. Upon information and belief, at least as early as 2000, Merrill Lynch began offering another related program called the Merrill Lynch Banking Advantage Program ("MLBA Program"). Upon information and belief, details of the MLBA Program are highly material to several, if not all, of the claim limitations in the '286, '551, and '350 Patents.

104. Upon information and belief, the Island Plaintiffs, named inventors, or attorneys, agents, or representatives of the Island Plaintiffs who were associated with the filing and prosecution of the then-pending application that led to the issuance of the '551 Patent, disclosed two material references regarding the MLBA Program to the USPTO in an IDS on March 3, 2009. In disclosing the two material references, the Island Plaintiffs certified that "to the knowledge of the undersigned, after making reasonable inquiry, no item of information contained in the [IDS] was known to any individual designated in 37 C.F.R. § 1.56(c) more than three months prior to the filing of the [IDS]." Upon information and belief, Bruce Bent II, one of the named inventors of the '286, '551, and '350 Patents, was aware of the MLBA Program long before the filing of the IDS, as evidenced by his comments about the program in a November 1, 2000 article in the periodical, "On Wall Street." Upon information and belief, the Island

Plaintiffs, named inventors, or attorneys, agents, or representatives of the Island Plaintiffs were also aware of the MLBA Program more than three months before the filing of the March 3, 2009 IDS, as evidenced by the iMoneyNet Article. Upon information and belief, this material misrepresentation was made with an intent to deceive the USPTO and constitutes inequitable conduct which renders the '551 Patent unenforceable.

105. During the prosecution of the '551 Patent, the Island Plaintiffs were notified that the information contained in the March 3, 2009 IDS would not be considered by the USPTO because it was filed after the issue fee was paid. Despite this notice, the Island Plaintiffs failed to file a petition to withdraw the '551 Patent from issuing and failed to file a Request for Continued Examination ("RCE") to allow the USPTO to consider the two documents that disclosed material and non-cumulative information about the MLBA Program. Upon information and belief, this failure to disclose documents pertaining to the MLBA Program was a material omission made with an intent to deceive the USPTO which constitutes inequitable conduct.

106. Upon information and belief, the Island Plaintiffs, named inventors, or attorneys, agents, or representatives of the Island Plaintiffs who were associated with the filing and prosecution of the applications that led to the issuance of the '286, '551, and '350 Patents knowingly and intentionally withheld material information from the USPTO with regards to the MLBA Program, including but not limited to the iMoneyNet Article. The MLBA Program was on sale and/or in public use more than one year prior to the filing dates of the applications that resulted in the '286, '551, and '350 Patents and information about the MLBA Program was material to the patentability of one or more of the claims of the applications that resulted in the '286, '551, and '350 Patents. Upon information and belief, during the prosecution of the applications that led to the '286, '551, and '350 Patents, with the intent to deceive the USPTO, the Island Plaintiffs, named inventors, or attorneys, agents, or representatives of the Island Plaintiffs who were associated with the filing and prosecution of the applications that led to the issuance of the '286, '551, and '350 Patents were aware of material information regarding the

MLBA Program and failed to disclose such information. This constitutes inequitable conduct, which renders the '286, '551, and '350 Patents unenforceable.

F. Failure to Disclose Information Regarding Deposit Sweep Services

107. Upon information and belief, the Island Plaintiffs, named inventors, or attorneys, agents, or representatives of the Island Plaintiffs who were associated with the filing and prosecution of the applications that led to the issuance of the '231 Patent knowingly and intentionally withheld material information from the USPTO regarding deposit sweep services, including without limitation a letter from William W. Wiles (Secretary of the Federal Reserve) dated June 22, 1983, a letter from Michael Bradford (General Counsel for the Federal Reserve Board) dated November 16, 1984, letters from Oliver I. Ireland (Associate General Counsel of the Federal Reserve Board) dated June 22, 1988, February 7, 1995, August 1, 1995, August 30, 1995, and October 18, 1996. Each of these printed publications was material to the patentability of one or more of the claims of the application that resulted in the '231 Patent. Upon information and belief, during the prosecution of the applications that led to the '231 Patent, with the intent to deceive the USPTO, the Island Plaintiffs, named inventors, or attorneys, agents, or representatives of the Island Plaintiffs who were associated with the filing and prosecution of the applications that led to the issuance of the '231 Patent were aware of each of the printed publications and failed to disclose them. This constitutes inequitable conduct that would render the '231 Patent unenforceable. Under the doctrine of infectious unenforceability, this inequitable conduct during the prosecution of the '231 Patent renders unenforceable later-filed applications, including the applications that led to the '286, '551, and '350 Patents.

**DEMAND FOR JURY TRIAL**

DBAG demands a trial by jury of all issues set forth herein pursuant to Fed. R. Civ. P.

38.

DATED: June 25, 2009

Respectfully Submitted,

By: 

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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

ISLAND INTELLECTUAL PROPERTY LLC,  
LIDS CAPITAL LLC, DOUBLE ROCK  
CORPORATION, and INTRASWEEP LLC,

Plaintiffs,

v.

PROMONTORY INTERFINANCIAL  
NETWORK, LLC, MBSC SECURITIES  
CORPORATION, DEUTSCHE BANK AG,  
DEUTSCHE BANK TRUST COMPANY  
AMERICAS, and TOTAL BANK SOLUTIONS,  
LLC,

Defendants.

Civil Action No. 09 Civ. 2675 (VM)

**DEUTSCHE BANK TRUST  
COMPANY AMERICAS' ANSWER  
TO CONSOLIDATED FIRST  
AMENDED COMPLAINT AND  
COUNTERCLAIMS**

**JURY TRIAL DEMANDED**

Deutsche Bank Trust Company Americas ("DBTCA"), by and through its undersigned attorneys, respectively files this Answer to the Consolidated First Amended Complaint filed by Plaintiffs Island Intellectual Property LLC ("Island IP"), LIDs Capital LLC ("LIDs Capital"), Double Rock Corporation ("Double Rock"), and Intrasweep LLC ("Intrasweep") (collectively, the "Island Plaintiffs") and Counterclaims against the Island Plaintiffs, as follows.

**ANSWER TO CONSOLIDATED FIRST AMENDED COMPLAINT**

**NATURE OF THE ACTION**

1. DBTCA admits only that the Island Plaintiffs purport that this is an action for patent infringement in paragraph 1. DBTCA denies any and all remaining allegations of paragraph 1.

A. DBTCA admits only that the Island Plaintiffs purport in paragraph 1A of the Consolidated First Amended Complaint that this is an action for patent infringement arising out of Defendant Promontory Interfinancial Network, LLC's ("Promontory"),

Defendant MBSC Securities Corporation's ("MBSC"), Defendant Deutsche Bank AG's ("DBAG"), Defendant Total Bank Solutions, LLC's ("TBS"), and Defendant DBTCA's alleged infringement of U.S. Patent No. 7,509,286. DBTCA denies any and all remaining allegations of paragraph 1A.

B. DBTCA admits only that the Island Plaintiffs purport in paragraph 1B of the Consolidated First Amended Complaint that this is an action for patent infringement arising out of Defendant Promontory's, Defendant DBAG's, Defendant TBS's, and Defendant DBTCA's alleged infringement of U.S. Patent No. 7,519,551. DBTCA denies any and all remaining allegations of paragraph 1B.

C. DBTCA admits only that the Island Plaintiffs purport in paragraph 1C of the Consolidated First Amended Complaint that this is an action for patent infringement arising out of Defendant DBAG's, Defendant TBS's, and Defendant DBTCA's alleged infringement of U.S. Patent No. 7,536,350. DBTCA denies any and all remaining allegations of paragraph 1C.

2. DBTCA only admits that the Island Plaintiffs purport in paragraph 1 of the Consolidated First Amended Complaint that the Consolidated First Amended Complaint asserts claims. DBTCA denies any and all remaining allegations of paragraph 2.

A. DBTCA admits only that the Island Plaintiffs purport in paragraph 2A of the Consolidated First Amended Complaint that the Consolidated First Amended Complaint asserts claims against Defendant Promontory, Defendant MBSC, Defendant DBAG, Defendant TBS, and Defendant DBTCA arising from their alleged infringement of Claim 1 of U.S. Patent No. 7,509,286, issued on March 24, 2009, and entitled "Systems and Methods for Money Fund Banking with Flexible Interest Allocation" ("the '286 Patent"). DBTCA denies any and all remaining allegations of paragraph 2A.

B. DBTCA admits only that the Island Plaintiffs purport in paragraph 2B of the Consolidated First Amended Complaint that the Consolidated First Amended Complaint asserts claims against Defendant Promontory arising from its alleged infringement of Claim 18 of U.S. Patent No. 7,519,551, entitled "Systems and Methods for Administering Return Sweep Accounts" ("the '551 Patent"). DBTCA denies any and all remaining allegations of paragraph 2B.

C. DBTCA admits only that the Island Plaintiffs purport in paragraph 2C of the Consolidated First Amended Complaint that the Consolidated First Amended Complaint asserts claims against Defendant DBAG, Defendant TBS, and Defendant DBTCA arising from their alleged infringement of Claim 1 of the '551 Patent. DBTCA denies any and all remaining allegations of paragraph 2C.

D. DBTCA admits only that the Island Plaintiffs purport in paragraph 2D of the Consolidated First Amended Complaint that the Consolidated First Amended Complaint asserts claims against Defendant DBAG, Defendant TBS, and Defendant DBTCA arising from their alleged infringement of Claim 12 of U.S. Patent No. 7,536,350, issued on May 19, 2009, and entitled "Systems and Methods for Providing Enhanced Account Management Services for Multiple Banks" ("the '350 Patent"). DBTCA denies any and all remaining allegations of paragraph 2D.

3. Responding to paragraph 3 of the Consolidated First Amended Complaint, DBTCA admits that purported copies of the '286 Patent, '551 Patent, and '350 Patent were attached to the Consolidated First Amended Complaint. DBTCA denies any and all remaining allegations of paragraph 3.

THE PARTIES

4. Responding to paragraph 4 of the Consolidated First Amended Complaint, DBTCA, upon information and belief, admits that Island IP is a limited liability company, organized and existing under the laws of the State of Delaware and that its principal place of business is located at 1250 Broadway, Thirty-Second Floor, New York, NY 10001, within this District. DBTCA denies any and all remaining allegations in paragraph 4.

5. Responding to paragraph 5 of the Consolidated First Amended Complaint, DBTCA, upon information and belief, admits that LIDs Capital is a limited liability company, organized and existing under the laws of the State of Delaware and that its principal place of business is located at 1250 Broadway, Thirty-Second Floor, New York, NY 10001, within this District. DBTCA denies any and all remaining allegations in paragraph 5.

6. Responding to paragraph 6 of the Consolidated First Amended Complaint, DBTCA, upon information and belief, admits that Double Rock is a corporation organized and existing under the laws of the State of New Jersey and that its principal place of business is located at 1250 Broadway, Thirty-Second Floor, New York, NY 10001, within this District. DBTCA denies any and all remaining allegations in paragraph 6.

7. Responding to paragraph 7 of the Consolidated First Amended Complaint, DBTCA, upon information and belief, admits that Intrasweep is a limited liability company, organized and existing under the laws of the State of Delaware and that its principal place of business is located at 1250 Broadway, Thirty-Second Floor, New York, NY 10001, within this District. DBTCA denies any and all remaining allegations in paragraph 7.

8. DBTCA is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 8 of the Consolidated First Amended Complaint, and, accordingly denies the same.



9. DBTCA is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 9 of the Consolidated First Amended Complaint, and, accordingly denies the same.

10. Responding to paragraph 10 of the Consolidated Amended Complaint, DBTCA, upon information and belief, admits that Defendant DBAG is a corporation organized and existing under the laws of the Federal Republic of Germany and that DBAG's regional head office is located at 60 Wall Street, New York, New York, 10005, within this District. DBTCA denies any and all of the remaining allegations in paragraph 10.

11. Responding to paragraph 11 of the Consolidated Amended Complaint, DBTCA admits that DBTCA is a corporation organized and existing under the laws of the State of New York and that its principal place of business is located at 60 Wall St., New York, New York 10005, within this District. DBTCA denies any and all remaining allegations in paragraph 11.

12. DBTCA is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 12 of the Consolidated First Amended Complaint, and, accordingly denies the same.

#### JURISDICTION AND VENUE

13. DBTCA admits only that paragraph 13 of the Consolidated First Amended Complaint purports that this is an action for patent infringement arising under the patent statutes, 35 U.S.C. § 1 *et seq.* DBTCA denies any and all remaining allegations in paragraph 13.

14. Responding to paragraph 14 of the Consolidated First Amended Complaint, DBTCA admits that this Court has subject matter jurisdiction over patent claims under 28 U.S.C. §§ 1331 and 1338(a). DBTCA denies any and all remaining allegations in paragraph 14.

15. DBTCA is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 15 of the Consolidated First Amended Complaint, and, accordingly denies the same.

16. DBTCA is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 16 of the Consolidated First Amended Complaint, and, accordingly denies the same.

17. Responding to paragraph 17 of the Consolidated Amended Complaint, DBTCA, upon information and belief, admits that DBAG is subject to this Court's personal jurisdiction because it does business in this District. DBTCA denies any and all remaining allegations in paragraph 17.

18. Responding to paragraph 18 of the Consolidated Amended Complaint, DBTCA admits that it is subject to the Court's personal jurisdiction for the purpose of this action. DBTCA also admits that it offers and operates banking services and that it maintains an office within the State of New York and this District. DBTCA denies any and all of the remaining allegations in paragraph 18.

19. DBTCA is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 19 of the Consolidated First Amended Complaint, and, accordingly denies the same.

20. Responding to paragraph 20 of the Consolidated Amended Complaint, DBTCA admits that venue is proper in this Court pursuant to 28 U.S.C. §§ 1391 and 1400(b).

FACTUAL BACKGROUND

21. DBTCA is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 21 of the Consolidated First Amended Complaint, and, accordingly denies the same.

22. DBTCA is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 22 of the Consolidated First Amended Complaint, and, accordingly denies the same.

23. DBTCA is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 23 of the Consolidated First Amended Complaint, and, accordingly denies the same.

24. DBTCA is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 24 of the Consolidated First Amended Complaint, and, accordingly denies the same.

25. DBTCA is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 25 of the Consolidated First Amended Complaint, and, accordingly denies the same.

26. DBTCA is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 26 of the Consolidated First Amended Complaint, and, accordingly denies the same.

27. DBTCA is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 27 of the Consolidated First Amended Complaint, and, accordingly denies the same.

28. DBTCA is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 28 of the Consolidated First Amended Complaint, and, accordingly denies the same.

THE PATENTS-IN-SUIT

29. DBTCA denies the allegations of paragraph 29 of the Consolidated Amended Complaint.

30. DBTCA denies the allegations of paragraph 30 of the Consolidated Amended Complaint.

31. DBTCA denies the allegations of paragraph 31 of the Consolidated Amended Complaint.

32. Responding to paragraph 32 of the Consolidated First Amended Complaint, upon information and belief, DBTCA admits that Island IP is a wholly-owned subsidiary of Double Rock and that it is the owner of all rights, title and interest in the '286 Patent, the '551 Patent, and the '350 Patent. DBTCA denies any and all remaining allegations of paragraph 32.

33. Responding to paragraph 33 of the Consolidated First Amended Complaint, DBTCA, upon information and belief, admits that LIDs Capital is a wholly-owned subsidiary of Double Rock. DBTCA is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of paragraph 33 of the Consolidated First Amended Complaint, and, accordingly denies the same.

34. Responding to paragraph 34 of the Consolidated First Amended Complaint, DBTCA, upon information and belief, admits that Intrasweep is a wholly-owned subsidiary of Double Rock. DBTCA is without knowledge or information sufficient to form a belief as to the

truth of the allegations of paragraph 34 of the Consolidated First Amended Complaint, and, accordingly denies the same.

35. DBTCA is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 35 of the Consolidated First Amended Complaint, and, accordingly denies the same.

THE PROMONTORY AND DREYFUS INFRINGING PRODUCTS

36. DBTCA is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 36 of the Consolidated First Amended Complaint, and, accordingly denies the same.

37. DBTCA is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 37 of the Consolidated First Amended Complaint, and, accordingly denies the same.

38. DBTCA is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 38 of the Consolidated First Amended Complaint, and, accordingly denies the same.

39. DBTCA is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 39 of the Consolidated First Amended Complaint, and, accordingly denies the same.

40. DBTCA is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 40 of the Consolidated First Amended Complaint, and, accordingly denies the same.

41. DBTCA is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 41 of the Consolidated First Amended Complaint, and, accordingly denies the same.

42. DBTCA is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 42 of the Consolidated First Amended Complaint, and, accordingly denies the same.

43. DBTCA is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 43 of the Consolidated First Amended Complaint, and, accordingly denies the same.

THE DEUTSCHE DEFENDANTS ALLEGEDLY INFRINGING PRODUCTS

44. Responding to paragraph 44 of the Consolidated First Amended Complaint, DBTCA admits that TBS operates the “Deutsche Bank Insured Deposit Program” (“Deutsche IDP”) within the United States. DBTCA denies any and all remaining allegations of paragraph 44.

45. Responding to paragraph 45 of the Consolidated First Amended Complaint, DBTCA admits that TBS is a financial data processing company that provides the computer and record keeping services for the Deutsche IDP. DBTCA denies any and all remaining allegations of paragraph 45.

46. DBTCA denies the allegations of paragraph 46 to the Consolidated First Amended Complaint.

47. Responding to paragraph 47 of the Consolidated First Amended Complaint, DBTCA admits that it does not have a license or other authorization from any of the Island

Plaintiffs to practice the claims set forth in the '286 Patent. DBTCA denies any and all remaining allegations in paragraph 47.

48. DBTCA denies the allegations of paragraph 48 to the Consolidated First Amended Complaint.

49. Responding to paragraph 49 of the Consolidated First Amended Complaint, DBTCA admits that it does not have a license or other authorization from any of the Island Plaintiffs to practice the claims set forth in the '551 Patent. DBTCA denies any and all remaining allegations in paragraph 49.

50. DBTCA denies the allegations of paragraph 50 to the Consolidated First Amended Complaint.

51. Responding to paragraph 51 of the Consolidated First Amended Complaint, DBTCA admits that it does not have a license or other authorization from any of the Island Plaintiffs to practice the claims set forth in the '350 Patent. DBTCA denies any and all remaining allegations in paragraph 51.

52. DBTCA is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 52 of the Consolidated First Amended Complaint, and, accordingly denies the same.

COUNT ONE

(By Plaintiffs Island IP, LIDs Capital and Double Rock for Patent Infringement by the Defendant Promontory and Defendant MBSC of the '286 Patent)

53. Responding to paragraph 53 of the Consolidated Amended Complaint, DBTCA admits only that the Island Plaintiffs purport to repeat and reallege the allegations of paragraphs

1 through 52 of their claims and DBTCA incorporates its responses thereto as if fully set forth herein.

54. DBTCA is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 54 of the Consolidated First Amended Complaint, and, accordingly denies the same.

55. DBTCA is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 55 of the Consolidated First Amended Complaint, and, accordingly denies the same.

56. DBTCA is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 56 of the Consolidated First Amended Complaint, and, accordingly denies the same.

57. DBTCA is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 57 of the Consolidated First Amended Complaint, and, accordingly denies the same.

#### COUNT TWO

(By Plaintiffs Island IP, LIDs Capital and Double Rock for Patent Infringement by the Deutsche Defendants of the '286 Patent)

58. Responding to paragraph 58 of the Consolidated Amended Complaint, DBTCA admits only that the Island Plaintiffs purport to repeat and reallege the allegations of paragraphs 1 through 52 of their claims and DBTCA incorporates its responses thereto as if fully set forth herein.

59. DBTCA denies the allegations of paragraph 59 to the Consolidated First Amended Complaint.



60. DBTCA denies the allegations of paragraph 60 to the Consolidated First Amended Complaint.

61. DBTCA denies the allegations of paragraph 61 to the Consolidated First Amended Complaint.

62. DBTCA denies the allegations of paragraph 62 to the Consolidated First Amended Complaint.

COUNT THREE

(By Plaintiffs Island IP, LIDs Capital and Double Rock for Patent Infringement by Defendant Promontory of the '551 Patent)

63. Responding to paragraph 63 of the Consolidated Amended Complaint, DBTCA admits only that the Island Plaintiffs purport to repeat and reallege the allegations of paragraphs 1 through 52 of their claims and DBTCA incorporates its responses thereto as if fully set forth herein.

64. DBTCA is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 64 of the Consolidated First Amended Complaint, and, accordingly denies the same.

65. DBTCA is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 65 of the Consolidated First Amended Complaint, and, accordingly denies the same.

66. DBTCA is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 66 of the Consolidated First Amended Complaint, and, accordingly denies the same.

67. DBTCA is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 67 of the Consolidated First Amended Complaint, and, accordingly denies the same.

68. DBTCA is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 68 of the Consolidated First Amended Complaint, and, accordingly denies the same.

COUNT FOUR

(By Plaintiffs Island IP, LIDs Capital and Double Rock for Patent Infringement by the Deutsche Defendants of the '286 Patent)

69. Responding to paragraph 69 of the Consolidated Amended Complaint, DBTCA admits only that the Island Plaintiffs purport to repeat and reallege the allegations of paragraphs 1 through 52 of their claims and DBTCA incorporates its responses thereto as if fully set forth herein.

70. DBTCA denies the allegations of paragraph 70 to the Consolidated First Amended Complaint.

71. DBTCA denies the allegations of paragraph 71 to the Consolidated First Amended Complaint.

72. Responding to paragraph 72 of the Consolidated Amended Complaint, DBTCA admits that it has been on notice of a published Application which matured into the '551 Patent since on or about October 18, 2005. DBTCA denies any and all remaining allegations of paragraph 72.

73. DBTCA denies the allegations of paragraph 73 to the Consolidated First Amended Complaint.

74. DBTCA denies the allegations of paragraph 74 to the Consolidated First Amended Complaint.

COUNT FIVE

(By Plaintiffs Island IP, LIDs Capital and Double Rock for Patent Infringement by the Deutsche Defendants of the '286 Patent)

75. Responding to paragraph 75 of the Consolidated Amended Complaint, DBTCA admits only that the Island Plaintiffs purport to repeat and reallege the allegations of paragraphs 1 through 52 of their claims and DBTCA incorporates its responses thereto as if fully set forth herein.

76. DBTCA denies the allegations of paragraph 76 to the Consolidated First Amended Complaint.

77. DBTCA denies the allegations of paragraph 77 to the Consolidated First Amended Complaint.

78. DBTCA denies the allegations of paragraph 78 to the Consolidated First Amended Complaint.

79. DBTCA denies the allegations of paragraph 79 to the Consolidated First Amended Complaint.

PRAYER FOR RELIEF

I. WITH RESPECT TO THE '286 PATENT

A. DBTCA denies that the Island Plaintiffs are entitled to the relief requested in Paragraph I.A.

B. DBTCA denies that the Island Plaintiffs are entitled to the relief requested in Paragraph I.B.

C. DBTCA denies that the Island Plaintiffs are entitled to the relief requested in Paragraph I.C.

D. DBTCA denies that the Island Plaintiffs are entitled to the relief requested in Paragraph I.D.

II. WITH RESPECT TO THE '551 PATENT

A. DBTCA denies that the Island Plaintiffs are entitled to the relief requested in Paragraph II.A.

B. DBTCA denies that the Island Plaintiffs are entitled to the relief requested in Paragraph II.B.

C. DBTCA denies that the Island Plaintiffs are entitled to the relief requested in Paragraph II.C.

D. DBTCA denies that the Island Plaintiffs are entitled to the relief requested in Paragraph II.D.

E. DBTCA denies that the Island Plaintiffs are entitled to the relief requested in Paragraph II.E.

III. WITH RESPECT TO THE '350 PATENT

A. DBTCA denies that the Island Plaintiffs are entitled to the relief requested in Paragraph III.A.

B. DBTCA denies that the Island Plaintiffs are entitled to the relief requested in Paragraph III.B.

C. DBTCA denies that the Island Plaintiffs are entitled to the relief requested in Paragraph III.C.

D. DBTCA denies that the Island Plaintiffs are entitled to the relief requested in Paragraph III.D.

80. DBTCA admits that the Island Plaintiffs have requested a trial by jury in paragraph 80 of the Consolidated First Amended Complaint.

#### AFFIRMATIVE DEFENSES

##### First Affirmative Defense (Non-Infringement)

81. The Island Plaintiffs are not entitled to any relief against DBTCA because DBTCA is not infringing and has not infringed, directly, by inducement, contributorily or in any way, any valid claims of the '286, '551, and '350 Patents.

##### Second Affirmative Defense (Invalidity)

82. Upon information and belief, one or more claims of the '286, '551, and '350 Patents are invalid at least for failure to meet the requirements of Title 35 of the United States Code, particularly, but not limited to, 35 U.S.C. §§ 101, 102, 103, and 112.

##### Third Affirmative Defense (Unenforceability)

83. Upon information and belief, and on the basis of conduct in the United States Patent and Trademark Office ("USPTO"), during the prosecution of the applications that matured into the '286, '551, and '350 Patents and other related applications, the Island Plaintiffs

are barred from asserting the '286, '551, and '350 Patents against DBTCA for having engaged in inequitable conduct.

A. Failure to Disclose Material Prior Sales and Public Uses

84. Upon information and belief, the Island Plaintiffs, named inventors, or attorneys, agents, or representatives of the Island Plaintiffs who were associated with the prosecution of the applications that matured into the '286, '551 and '350 Patents and other related applications, knowingly and intentionally failed to disclose and made material misrepresentations regarding material prior sales and public uses, including but not limited to, the prior sale and public use of the Reserve Insured Deposits program. These failures to disclose and material misrepresentations were performed with an intent to deceive the USPTO.

85. The '286 Patent, filed on April 11, 2003, is a continuation-in-part of the '350 Patent, filed on March 6, 2003, and of the '551 Patent, filed on February 8, 2002. The '350 Patent is also a continuation-in-part of the '551 Patent. The '286, '551, and '350 Patents are all continuations-in-part of U.S. Application No. 09/677,535 ("the '535 Application"), filed on October 2, 2000. The '535 Application and the '551 Patent also are continuations-in-part of U.S. Patent No. 6,374,231, filed on October 21, 1998 ("the '231 Patent"). The '286, '551, and '350 Patents are therefore related to both the '535 Application and the '231 Patent.

86. Upon information and belief, Double Rock was formerly known as the Reserve Management Corporation ("Reserve"). Upon information and belief, the principals of Reserve were also the principals of a related entity, called The Reserve Funds. Upon information and belief, The Reserve Funds offered a program called Reserve Insured Deposits. Upon information and belief, the Reserve Insured Deposits program is prior art under 35 U.S.C. § 102(b) to the '231 Patent.

87. On September 21, 2001, Reserve filed a trademark application (Ser. No. 76/315,660) with the USPTO for the mark RESERVE INSURED DEPOSITS. Reserve's application specified that the mark was for "financial services, namely, providing insured money market account services," with a first use in commerce on October 9, 1997. On October 18, 2006, Reserve filed a request to change the date of the first use in commerce to December 31, 1997. In support of its request, Reserve attached an October 17, 2006 declaration by Bruce Bent II, which stated that the first use in commerce was actually October 23, 1997.

88. During the prosecution of the '286, '551, and '350 Patents, as well as during the prosecution of the '231 Patent, the Island Plaintiffs, named inventors, or attorneys, agents, or representatives of the Island Plaintiffs who were associated with the prosecution of these patents, submitted an information disclosure statement ("IDS"), in or around March 2007, disclosing an advertisement in the October 1997 issue of the periodical "Mutual Funds" by Reserve that advertised an "FDIC insured money market account with free, unlimited, no minimum checking." Upon information and belief, this advertisement was circulated as early as September 8, 1997. These IDSs included a February 27, 2007 declaration by Bruce Bent II, who was the senior vice president of Reserve at the time and is a named inventor of the '231, '286, '551, and '350 Patents, that stated that the first use in commerce of the Reserve Insured Deposits program was actually October 23, 1997 and that the October 9, 2007 date that was used in the trademark application was an error.

89. Upon information and belief, Bruce Bent II's February 27, 2007 declaration referred to and attached a true copy of the "Mutual Funds" advertisement. Upon information and belief, this advertisement advertised that the Reserve Insured Deposits Accounts offered "high interest (4.26% as of 8/6/97)."

90. Upon information and belief, the Reserve Insured Deposits program was in use in commerce as early as August 1997. In a 2004 report entitled "Brokerage Cash Sweep Options:

The Shift from Money Funds to FDIC-Insured Bank Deposit Accounts,” published by iMoneyNet and sponsored by The Reserve Funds (“iMoneyNet Article”), the report states that “Money fund-inventor The Reserve Funds introduced Reserve Insured Deposits® in August 1997.” Upon information and belief, the Island Plaintiffs, named inventors, or attorneys, agents, or representatives of the Island Plaintiffs who were associated with the prosecution of the ’231, ’286, ’551 and ’350 Patents, knowingly and intentionally failed to disclose the iMoneyNet Article. This constitutes inequitable conduct, which renders the ’286, ’551, and ’350 Patents unenforceable.

91. Upon information and belief, the Reserve Insured Deposits program, as it existed in August 1997, was within the scope of the ’231 Patent and was put on sale and in public use more than one year prior to the filing date of October 21, 1998. Upon information and belief, the Island Plaintiffs, named inventors, or attorneys, agents, or representatives of the Island Plaintiffs who were associated with the prosecution of the ’231 Patent, knowingly and intentionally failed to disclose and made material misrepresentations regarding the sales and public uses of the Reserve Insured Deposits program prior to October 21, 1997. Upon information and belief, the failures to disclose information and material misrepresentations, including, but not limited to, the examples provided in paragraphs 84 through 90, were made with an intent to deceive the USPTO and thus constitute inequitable conduct that would render the ’231 Patent unenforceable. Under the doctrine of infectious unenforceability, this inequitable conduct during the prosecution of the ’231 Patent renders unenforceable later-filed applications, including the applications that led to the ’286, ’551, and ’350 Patents.

**B. Material Misrepresentations Regarding The First Use In Commerce Of The Reserve Insured Deposits Program**

92. Upon information and belief, the Island Plaintiffs, named inventors, or attorneys, agents, or representatives of the Island Plaintiffs who were associated with the filing and prosecution of the application that led to the issuance of the ’286, ’551, and ’350 Patents and



other related applications knowingly and intentionally made material misrepresentations to the USPTO with the intent to deceive the USPTO regarding the first use in commerce of the Reserve Insured Deposits program.

93. Among other things, upon information and belief, on March 10, 2008, the USPTO rejected the application that eventually led to the issuance of the '286 Patent under 35 U.S.C. § 102(b), citing a prior public use of the Reserve Insured Deposits program. In response, in an Amendment dated May 9, 2008, Reserve quoted language from Bruce Bent II's declaration from February 27, 2007, that stated that the first use in commerce was October 23, 1997. This material misrepresentation evidences an intent to deceive the USPTO and constitutes inequitable conduct, which renders the '286 Patent unenforceable.

94. Among other things, upon information and belief, on April 5, 2007, the USPTO rejected the application that eventually led to the issuance of the '551 Patent under 35 U.S.C. § 102(b), and requested information regarding the prior public use of the Reserve Insured Deposits program. In response, in an Amendment dated October 5, 2007, Reserve quoted language from Bruce Bent II's declaration from February 27, 2007, that stated that the first use in commerce was October 23, 1997. This material misrepresentation evidences an intent to deceive the USPTO and constitutes inequitable conduct, which renders the '551 Patent unenforceable.

95. Among other things, upon information and belief, on March 10, 2008, the USPTO rejected the application that eventually led to the issuance of the '350 Patent under 35 U.S.C. § 102(b), citing a prior public use of the Reserve Insured Deposits program. In response, in an Amendment dated May 9, 2008, Reserve quoted language from Bruce Bent II's declaration from February 27, 2007, that stated that the first use in commerce was October 23, 1997. This material misrepresentation evidences an intent to deceive the USPTO and constitutes inequitable conduct, which renders the '350 Patent unenforceable.

C. Failure to Disclose the Original 1983 CMA/ISA Service

96. Upon information and belief, the Island Plaintiffs, named inventors, or attorneys, agents, or representatives of the Island Plaintiffs who were associated with the prosecution of the applications that matured into the '286, '551 and '350 Patents and other related applications, knowingly, and with the intent to deceive the USPTO, failed to disclose material information regarding the Insured Savings Account feature in Merrill Lynch's Cash Management Account Service.

97. Upon information and belief, the first deposit sweep service was developed and offered by Merrill Lynch, Pierce, Fenner & Smith ("Merrill Lynch"). As a broker-dealer, Merrill Lynch offered this service to its brokerage customers at least as early as 1983 as a feature of Merrill Lynch's Cash Management Account ("CMA"), brokerage account with cash management features. Merrill Lynch called this feature the Insured Savings Account ("ISA") (collectively, "Original 1983 CMA/ISA Service"). Upon information and belief, details of the Original 1983 CMA/ISA Service are highly material to several, if not all, of the claim limitations in the '286, '551, and '350 Patents.

98. Upon information and belief, the Island Plaintiffs, named inventors, or attorneys, agents, or representatives of the Island Plaintiffs who were associated with the filing and prosecution of the applications that led to the issuance of the '286, '551, and '350 Patents knowingly and intentionally withheld material information from the USPTO with regards to the Original 1983 CMA/ISA Service, including but not limited to the iMoneyNet Article. The Original 1983 CMA/ISA Service was on sale and/or in public use more than one year prior to the filing dates of the applications that resulted in the '286, '551, and '350 Patents and information about the Original 1983 CMA/ISA Service was material to the patentability of one or more of the claims of the applications that resulted in the '286, '551, and '350 Patents. Upon information and belief, during the prosecution of the applications that led to the '286, '551, and '350 Patents,

with the intent to deceive the USPTO, the Island Plaintiffs, named inventors, or attorneys, agents, or representatives of the Island Plaintiffs who were associated with the filing and prosecution of the applications that led to the issuance of the '286, '551, and '350 Patents were aware of material information about the Original 1983 CMA/ISA Service and failed to disclose material information about the Original 1983 CMA/ISA Service. This constitutes inequitable conduct, which renders the '286, '551, and '350 Patents unenforceable.

D. Failure to Disclose the 2000 CMA 2.0 Service

99. Upon information and belief, the Island Plaintiffs, named inventors, or attorneys, agents, or representatives of the Island Plaintiffs who were associated with the prosecution of the applications that matured into the '286, '551 and '350 Patents and other related applications, knowingly, and with the intent to deceive the USPTO, failed to disclose material information regarding the Merrill Lynch Cash Management Account 2.0.

100. Upon information and belief, at least as early as 1998, Merrill Lynch began developing a second deposit sweep service. Merrill Lynch offered this second service to its brokerage customers at least as early as 2000 under the name Cash Management Account 2.0 ("2000 CMA 2.0 Service"). Upon information and belief, details of the 2000 CMA 2.0 Service are highly material to several, if not all, of the claim limitations in the '286, '551, and '350 Patents.

101. Upon information and belief, the Island Plaintiffs, named inventors, or attorneys, agents, or representatives of the Island Plaintiffs who were associated with the filing and prosecution of the applications that led to the issuance of the '286, '551, and '350 Patents knowingly and intentionally withheld material information from the USPTO with regards to the 2000 CMA 2.0 Service, including but not limited to the iMoneyNet Article. The 2000 CMA 2.0 Service was on sale and/or in public use more than one year prior to the filing dates of the applications that resulted in the '286, '551, and '350 Patents and information about the 2000

CMA 2.0 Service was material to the patentability of one or more of the claims of the applications that resulted in the '286, '551, and '350 Patents. This constitutes inequitable conduct, which renders the '286, '551, and '350 Patents unenforceable.

**E. Failure to Disclose And Material Misrepresentations Regarding the Merrill Lynch Banking Advantage Program**

102. Upon information and belief, the Island Plaintiffs, named inventors, or attorneys, agents, or representatives of the Island Plaintiffs who were associated with the prosecution of the applications that matured into the '286, '551 and '350 Patents and other related applications, knowingly, and with the intent to deceive the USPTO, failed to disclose material information regarding the Merrill Lynch Banking Advantage Program.

103. Upon information and belief, at least as early as 2000, Merrill Lynch began offering another related program called the Merrill Lynch Banking Advantage Program ("MLBA Program"). Upon information and belief, details of the MLBA Program are highly material to several, if not all, of the claim limitations in the '286, '551, and '350 Patents.

104. Upon information and belief, the Island Plaintiffs, named inventors, or attorneys, agents, or representatives of the Island Plaintiffs who were associated with the filing and prosecution of the then-pending application that led to the issuance of the '551 Patent, disclosed two material references regarding the MLBA Program to the USPTO in an IDS on March 3, 2009. In disclosing the two material references, the Island Plaintiffs certified that "to the knowledge of the undersigned, after making reasonable inquiry, no item of information contained in the [IDS] was known to any individual designated in 37 C.F.R. § 1.56(c) more than three months prior to the filing of the [IDS]." Upon information and belief, Bruce Bent II, one of the named inventors of the '286, '551, and '350 Patents, was aware of the MLBA Program long before the filing of the IDS, as evidence by his comments about the program in a November 1, 2000 article in the periodical, "On Wall Street." Upon information and belief, the Island

Plaintiffs, named inventors, or attorneys, agents, or representatives of the Island Plaintiffs were also aware of the MLBA Program more than three months before the filing of the March 3, 2009 IDS, as evidenced by the iMoneyNet Article. Upon information and belief, this material misrepresentation was made with an intent to deceive the USPTO and constitutes inequitable conduct which renders the '551 Patent unenforceable.

105. During the prosecution of the '551 Patent, the Island Plaintiffs were notified that the information contained in the March 3, 2009 IDS would not be considered by the USPTO because it was filed after the issue fee was paid. Despite this notice, the Island Plaintiffs failed to file a petition to withdraw the '551 Patent from issuing and failed to file a Request for Continued Examination ("RCE") to allow the USPTO to consider the two documents that disclosed material and non-cumulative information about the MLBA Program. Upon information and belief, this failure to disclose documents pertaining to the MLBA Program was a material omission made with an intent to deceive the USPTO which constitutes inequitable conduct.

106. Upon information and belief, the Island Plaintiffs, named inventors, or attorneys, agents, or representatives of the Island Plaintiffs who were associated with the filing and prosecution of the applications that led to the issuance of the '286, '551, and '350 Patents knowingly and intentionally withheld material information from the USPTO with regards to the MLBA Program, including but not limited to the iMoneyNet Article. The MLBA Program was on sale and/or in public use more than one year prior to the filing dates of the applications that resulted in the '286, '551, and '350 Patents and information about the MLBA Program was material to the patentability of one or more of the claims of the applications that resulted in the '286, '551, and '350 Patents. Upon information and belief, during the prosecution of the applications that led to the '286, '551, and '350 Patents, with the intent to deceive the USPTO, the Island Plaintiffs, named inventors, or attorneys, agents, or representatives of the Island Plaintiffs who were associated with the filing and prosecution of the applications that led to the issuance of the '286, '551, and '350 Patents were aware of material information regarding the

MLBA Program and failed to disclose such information. This constitutes inequitable conduct, which renders the '286, '551, and '350 Patents unenforceable.

F. Failure to Disclose Information Regarding Deposit Sweep Services

107. Upon information and belief, the Island Plaintiffs, named inventors, or attorneys, agents, or representatives of the Island Plaintiffs who were associated with the filing and prosecution of the applications that led to the issuance of the '231 Patent knowingly and intentionally withheld material information from the USPTO regarding deposit sweep services, including without limitation a letter from William W. Wiles (Secretary of the Federal Reserve) dated June 22, 1983, a letter from Michael Bradford (General Counsel for the Federal Reserve Board) dated November 16, 1984, letters from Oliver I. Ireland (Associate General Counsel of the Federal Reserve Board) dated June 22, 1988, February 7, 1995, August 1, 1995, August 30, 1995, and October 18, 1996. Each of these printed publications was material to the patentability of one or more of the claims of the application that resulted in the '231 Patent. Upon information and belief, during the prosecution of the applications that led to the '231 Patent, with the intent to deceive the USPTO, the Island Plaintiffs, named inventors, or attorneys, agents, or representatives of the Island Plaintiffs who were associated with the filing and prosecution of the applications that led to the issuance of the '231 Patent were aware of each of the printed publications and failed to disclose them. This constitutes inequitable conduct that would render the '231 Patent unenforceable. Under the doctrine of infectious unenforceability, this inequitable conduct during the prosecution of the '231 Patent renders unenforceable later-filed applications, including the applications that led to the '286, '551, and '350 Patents.

## **DBTCA'S COUNTERCLAIMS**

### **THE PARTIES**

108. DBTCA is a corporation organized and existing under the laws of the State of New York. DBTCA's principal place of business is located at 60 Wall Street, New York, New York, 10005, within this District.

109. Upon information and belief, Island IP is a limited liability company organized and existing under the laws of the State of Delaware. Island IP's principal place of business is located at 1250 Broadway, Thirty-Second Floor, New York, NY 10001, within this District.

110. Upon information and belief, LIDs Capital is a limited liability company, organized and existing under the laws of the State of Delaware. LIDs Capital's principal place of business is located at 1250 Broadway, Thirty-Second Floor, New York, NY 10001, within this District.

111. Upon information and belief, Double Rock is corporation, organized and existing under the laws of the State of New Jersey. Double Rock's principal place of business is located at 1250 Broadway, Thirty-Second Floor, New York, NY 10001, within this District.

112. Upon information and belief, Intraseep is a limited liability company, organized and existing under the laws of the State of Delaware. Intraseep's principal place of business is located at 1250 Broadway, Thirty-Second Floor, New York, NY 10001, within this District.

### **JURISDICTION AND VENUE**

113. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331, 1338(a), 2201 and 2202.

114. Upon information and belief, Island IP is subject to personal jurisdiction in this judicial district because Island IP regularly conducts and transacts business in this judicial district and because its principal place of business is within this judicial district.

115. Upon information and belief, LIDs Capital is subject to personal jurisdiction in this judicial district because LIDs Capital regularly conducts and transacts business in this judicial district and because its principal place of business is within this judicial district.

116. Upon information and belief, Double Rock is subject to personal jurisdiction in this judicial district because Double Rock regularly conducts and transacts business in this judicial district and because its principal place of business is within this judicial district.

117. Upon information and belief, Intrasweep is subject to personal jurisdiction in this judicial district because Intrasweep regularly conducts and transacts business in this judicial district and because its principal place of business is within this judicial district.

118. Venue is appropriate in this judicial district pursuant to 28 U.S.C. §§ 1391 and 1400(b).

### CLAIMS FOR RELIEF

#### COUNT I

#### (Declaratory Judgment of Non-Infringement of U.S. Patent Nos. 7,509,286, 7,519,551, and 7,536,350)

119. The allegations contained in paragraphs 108 through 118 of this counterclaim are incorporated by reference herein with the same force and effect as if set forth in full below.

120. Upon information and belief, Island IP is the owner of all right, title and interest in and to the '286, '551 and '350 Patents.



121. DBTCA does not directly infringe, contribute to the infringement of, or induce infringement of, any valid claims of the '286, '551, and '350 Patents.

122. The Island Plaintiffs have charged in their Consolidated First Amended Complaint that DBTCA has been and still is infringing the '286, '551 and '350 Patents in light of its activities in connection with the Deutsche IDP.

123. DBTCA denies that DBTCA has been or is infringing, directly or indirectly, any of the claims of the '286, '551 and '350 Patents or otherwise engaging in any wrongdoing with respect to such patents. DBTCA has averred, and continues to aver, that it has not infringed and is not presently infringing any valid or enforceable claims contained in the '286, '551 and '350 Patents and it is not liable for damages, injunctive or other relief arising from any such alleged infringement.

124. There exists an actual and justiciable controversy between DBTCA and the Island Plaintiffs as to whether DBTCA infringes any claims of the '286, '551 and '350 Patents. This controversy is of sufficient immediacy and reality to warrant the issuance of a declaratory judgment.

125. Pursuant to 28 U.S.C. §§ 2201 and 2202, DBTCA is entitled to a declaratory judgment that it does not infringe any claim of the '286, '551, and '350 Patents.

## COUNT II

### (Declaratory Judgment of Invalidity of U.S. Patent Nos. 7,509,286, 7,519,551, and 7,536,350)

126. The allegations contained in paragraphs 108 through 125 of this counterclaim are incorporated by reference herein with the same force and effect as if set forth in full below.

127. Each and every claim of the '286, '551, and '350 Patents is invalid for failure to meet one or more of the requirements of Title 35 of the United States Code, particularly, but not limited to, 35 U.S.C. §§ 101, 102, 103, and 112.

128. There exists an actual and justiciable controversy between DBTCA and the Island Plaintiffs as to whether each and every claim of the '286, '551 and '350 Patents is invalid. This controversy is of sufficient immediacy and reality to warrant the issuance of a declaratory judgment.

129. Pursuant to 28 U.S.C. §§ 2201 and 2202, DBTCA is entitled to a declaratory judgment that each and every claim of the '286, '551, and '350 Patents is invalid.

### COUNT III

#### (Declaratory Judgment of Unenforceability of U.S. Patent Nos. 7,509,286, 7,519,551, and 7,536,350)

130. The allegations contained in paragraphs 108 through 129 of this counterclaim are incorporated by reference herein with the same force and effect as if set forth in full below.

131. On information and belief, and on the basis of conduct in the United States Patent and Trademark Office ("USPTO"), during the prosecution of the applications that matured into the '286, '551, and '350 Patents, the Island Plaintiffs are barred from asserting the '286, '551, and '350 Patents against the DBTCA for having engaged in inequitable conduct.

#### A. Failure to Disclose Material Prior Sales and Public Uses

132. Upon information and belief, the Island Plaintiffs, named inventors, or attorneys, agents, or representatives of the Island Plaintiffs who were associated with the prosecution of the applications that matured into the '286, '551 and '350 Patents and other related applications, knowingly and intentionally failed to disclose and made material misrepresentations regarding

material prior sales and public uses, including but not limited to, the prior sale and public use of the Reserve Insured Deposits program. These failures to disclose and material misrepresentations were performed with an intent to deceive the USPTO.

133. The '286 Patent, filed on April 11, 2003, is a continuation-in-part of the '350 Patent, filed on March 6, 2003, and of the '551 Patent, filed on February 8, 2002. The '350 Patent is also a continuation-in-part of the '551 Patent. The '286, '551, and '350 Patents are all continuations-in-part of U.S. Application No. 09/677,535 ("the '535 Application"), filed on October 2, 2000. The '535 Application and the '551 Patent also are continuations-in-part of U.S. Patent No. 6,374,231, filed on October 21, 1998 ("the '231 Patent"). The '286, '551, and '350 Patents are therefore related to both the '535 Application and the '231 Patent.

134. Upon information and belief, Double Rock was formerly known as the Reserve Management Corporation ("Reserve"). Upon information and belief, the principals of Reserve were also the principals of a related entity, called The Reserve Funds. Upon information and belief, The Reserve Funds offered a program called Reserve Insured Deposits. Upon information and belief, the Reserve Insured Deposits program is prior art under 35 U.S.C. § 102(b) to the '231 Patent.

135. On September 21, 2001, Reserve filed a trademark application (Ser. No. 76/315,660) with the USPTO for the mark RESERVE INSURED DEPOSITS. Reserve's application specified that the mark was for "financial services, namely, providing insured money market account services," with a first use in commerce on October 9, 1997. On October 18, 2006, Reserve filed a request to change the date of the first use in commerce to December 31, 1997. In support of its request, Reserve attached an October 17, 2006 declaration by Bruce Bent II, which stated that the first use in commerce was actually October 23, 1997.

136. During the prosecution of the '286, '551, and '350 Patents, as well as during the prosecution of the '231 Patent, the Island Plaintiffs, named inventors, or attorneys, agents, or

representatives of the Island Plaintiffs who were associated with the prosecution of these patents, submitted an information disclosure statement (“IDS”), in or around March 2007, disclosing an advertisement in the October 1997 issue of the periodical “Mutual Funds” by Reserve that advertised an “FDIC insured money market account with free, unlimited, no minimum checking.” Upon information and belief, this advertisement was circulated as early as September 8, 1997. These IDSs included a February 27, 2007 declaration by Bruce Bent II, who was the senior vice president of Reserve at the time and is a named inventor of the ’231, ’286, ’551, and ’350 Patents, that stated that the first use in commerce of the Reserve Insured Deposits program was actually October 23, 1997 and that the October 9, 2007 date that was used in the trademark application was an error.

137. Upon information and belief, Bruce Bent II’s February 27, 2007 declaration referred to and attached a true copy of the “Mutual Funds” advertisement. Upon information and belief, this advertisement advertised that the Reserve Insured Deposits Accounts offered “high interest (4.26% as of 8/6/97).”

138. Upon information and belief, the Reserve Insured Deposits program was in use in commerce as early as August 1997. In a 2004 report entitled “Brokerage Cash Sweep Options: The Shift from Money Funds to FDIC-Insured Bank Deposit Accounts,” published by iMoneyNet and sponsored by The Reserve Funds (“iMoneyNet Article”), the report states that “Money fund-inventor The Reserve Funds introduced Reserve Insured Deposits® in August 1997.” Upon information and belief, the Island Plaintiffs, named inventors, or attorneys, agents, or representatives of the Island Plaintiffs who were associated with the prosecution of the ’231, ’286, ’551 and ’350 Patents, knowingly and intentionally failed to disclose the iMoneyNet Article. This constitutes inequitable conduct, which renders the ’286, ’551, and ’350 Patents unenforceable.

139. Upon information and belief, the Reserve Insured Deposits program, as it existed in August 1997, was within the scope of the '231 Patent and was put on sale and in public use more than one year prior to the filing date of October 21, 1998. Upon information and belief, the Island Plaintiffs, named inventors, or attorneys, agents, or representatives of the Island Plaintiffs who were associated with the prosecution of the '231 Patent, knowingly and intentionally failed to disclose and made material misrepresentations regarding the sales and public uses of the Reserve Insured Deposits program prior to October 21, 1997. Upon information and belief, the failures to disclose information and material misrepresentations, including, but not limited to, the examples provided in paragraphs 132 through 138, were made with an intent to deceive the USPTO and thus constitute inequitable conduct that would render the '231 Patent unenforceable. Under the doctrine of infectious unenforceability, this inequitable conduct during the prosecution of the '231 Patent renders unenforceable later-filed applications, including the applications that led to the '286, '551, and '350 Patents.

**B. Material Misrepresentations Regarding The First Use In Commerce Of The Reserve Insured Deposits Program**

140. Upon information and belief, the Island Plaintiffs, named inventors, or attorneys, agents, or representatives of the Island Plaintiffs who were associated with the filing and prosecution of the application that led to the issuance of the '286, '551, and '350 Patents and other related applications knowingly and intentionally made material misrepresentations to the USPTO with the intent to deceive the USPTO regarding the first use in commerce of the Reserve Insured Deposits program.

141. Among other things, upon information and belief, on March 10, 2008, the USPTO rejected the application that eventually led to the issuance of the '286 Patent under 35 U.S.C. § 102(b), citing a prior public use of the Reserve Insured Deposits program. In response, in an Amendment dated May 9, 2008, Reserve quoted language from Bruce Bent II's declaration from February 27, 2007, that stated that the first use in commerce was October 23, 1997. This

material misrepresentation evidences an intent to deceive the USPTO and constitutes inequitable conduct, which renders the '286 Patent unenforceable.

142. Among other things, upon information and belief, on April 5, 2007, the USPTO rejected the application that eventually led to the issuance of the '551 Patent under 35 U.S.C. § 102(b), and requested information regarding the prior public use of the Reserve Insured Deposits program. In response, in an Amendment dated October 5, 2007, Reserve quoted language from Bruce Bent II's declaration from February 27, 2007, that stated that the first use in commerce was October 23, 1997. This material misrepresentation evidences an intent to deceive the USPTO and constitutes inequitable conduct, which renders the '551 Patent unenforceable.

143. Among other things, upon information and belief, on March 10, 2008, the USPTO rejected the application that eventually led to the issuance of the '350 Patent under 35 U.S.C. § 102(b), citing a prior public use of the Reserve Insured Deposits program. In response, in an Amendment dated May 9, 2008, Reserve quoted language from Bruce Bent II's declaration from February 27, 2007, that stated that the first use in commerce was October 23, 1997. This material misrepresentation evidences an intent to deceive the USPTO and constitutes inequitable conduct, which renders the '350 Patent unenforceable.

C. Failure to Disclose the Original 1983 CMA/ISA Service

144. Upon information and belief, the Island Plaintiffs, named inventors, or attorneys, agents, or representatives of the Island Plaintiffs who were associated with the prosecution of the applications that matured into the '286, '551 and '350 Patents and other related applications, knowingly, and with the intent to deceive the USPTO, failed to disclose material information regarding the Insured Savings Account feature in Merrill Lynch's Cash Management Account Service.

145. Upon information and belief, the first deposit sweep service was developed and offered by Merrill Lynch, Pierce, Fenner & Smith (“Merrill Lynch”). As a broker-dealer, Merrill Lynch offered this service to its brokerage customers at least as early as 1983 as a feature of Merrill Lynch’s Cash Management Account (“CMA”), brokerage account with cash management features. Merrill Lynch called this feature the Insured Savings Account (“ISA”) (collectively, “Original 1983 CMA/ISA Service”). Upon information and belief, details of the Original 1983 CMA/ISA Service are highly material to several, if not all, of the claim limitations in the ’286, ’551, and ’350 Patents.

146. Upon information and belief, the Island Plaintiffs, named inventors, or attorneys, agents, or representatives of the Island Plaintiffs who were associated with the filing and prosecution of the applications that led to the issuance of the ’286, ’551, and ’350 Patents knowingly and intentionally withheld material information from the USPTO with regards to the Original 1983 CMA/ISA Service, including but not limited to the iMoneyNet Article. The Original 1983 CMA/ISA Service was on sale and/or in public use more than one year prior to the filing dates of the applications that resulted in the ’286, ’551, and ’350 Patents and information about the Original 1983 CMA/ISA Service was material to the patentability of one or more of the claims of the applications that resulted in the ’286, ’551, and ’350 Patents. Upon information and belief, during the prosecution of the applications that led to the ’286, ’551, and ’350 Patents, with the intent to deceive the USPTO, the Island Plaintiffs, named inventors, or attorneys, agents, or representatives of the Island Plaintiffs who were associated with the filing and prosecution of the applications that led to the issuance of the ’286, ’551, and ’350 Patents were aware of material information about the Original 1983 CMA/ISA Service and failed to disclose material information about the Original 1983 CMA/ISA Service. This constitutes inequitable conduct, which renders the ’286, ’551, and ’350 Patents unenforceable.

D. Failure to Disclose the 2000 CMA 2.0 Service

147. Upon information and belief, the Island Plaintiffs, named inventors, or attorneys, agents, or representatives of the Island Plaintiffs who were associated with the prosecution of the applications that matured into the '286, '551 and '350 Patents and other related applications, knowingly, and with the intent to deceive the USPTO, failed to disclose material information regarding the Merrill Lynch Cash Management Account 2.0.

148. Upon information and belief, at least as early as 1998, Merrill Lynch began developing a second deposit sweep service. Merrill Lynch offered this second service to its brokerage customers at least as early as 2000 under the name Cash Management Account 2.0 ("2000 CMA 2.0 Service"). Upon information and belief, details of the 2000 CMA 2.0 Service are highly material to several, if not all, of the claim limitations in the '286, '551, and '350 Patents.

149. Upon information and belief, the Island Plaintiffs, named inventors, or attorneys, agents, or representatives of the Island Plaintiffs who were associated with the filing and prosecution of the applications that led to the issuance of the '286, '551, and '350 Patents knowingly and intentionally withheld material information from the USPTO with regards to the 2000 CMA 2.0 Service, including but not limited to the iMoneyNet Article. The 2000 CMA 2.0 Service was on sale and/or in public use more than one year prior to the filing dates of the applications that resulted in the '286, '551, and '350 Patents and information about the 2000 CMA 2.0 Service was material to the patentability of one or more of the claims of the applications that resulted in the '286, '551, and '350 Patents. This constitutes inequitable conduct, which renders the '286, '551, and '350 Patents unenforceable.



E. Failure to Disclose And Material Misrepresentations Regarding the Merrill Lynch Banking Advantage Program

150. Upon information and belief, the Island Plaintiffs, named inventors, or attorneys, agents, or representatives of the Island Plaintiffs who were associated with the prosecution of the applications that matured into the '286, '551 and '350 Patents and other related applications, knowingly, and with the intent to deceive the USPTO, failed to disclose material information regarding the Merrill Lynch Banking Advantage Program.

151. Upon information and belief, at least as early as 2000, Merrill Lynch began offering another related program called the Merrill Lynch Banking Advantage Program ("MLBA Program"). Upon information and belief, details of the MLBA Program are highly material to several, if not all, of the claim limitations in the '286, '551, and '350 Patents.

152. Upon information and belief, the Island Plaintiffs, named inventors, or attorneys, agents, or representatives of the Island Plaintiffs who were associated with the filing and prosecution of the then-pending application that led to the issuance of the '551 Patent, disclosed two material references regarding the MLBA Program to the USPTO in an IDS on March 3, 2009. In disclosing the two material references, the Island Plaintiffs certified that "to the knowledge of the undersigned, after making reasonable inquiry, no item of information contained in the [IDS] was known to any individual designated in 37 C.F.R. § 1.56(c) more than three months prior to the filing of the [IDS]." Upon information and belief, Bruce Bent II, one of the named inventors of the '286, '551, and '350 Patents, was aware of the MLBA Program long before the filing of the IDS, as evidenced by his comments about the program in a November 1, 2000 article in the periodical, "On Wall Street." Upon information and belief, the Island Plaintiffs, named inventors, or attorneys, agents, or representatives of the Island Plaintiffs were also aware of the MLBA Program more than three months before the filing of the March 3, 2009 IDS, as evidenced by the iMoneyNet Article. Upon information and belief, this material

misrepresentation was made with an intent to deceive the USPTO and constitutes inequitable conduct which renders the '551 Patent unenforceable.

153. During the prosecution of the '551 Patent, the Island Plaintiffs were notified that the information contained in the March 3, 2009 IDS would not be considered by the USPTO because it was filed after the issue fee was paid. Despite this notice, the Island Plaintiffs failed to file a petition to withdraw the '551 Patent from issuing and failed to file a Request for Continued Examination ("RCE") to allow the USPTO to consider the two documents that disclosed material and non-cumulative information about the MLBA Program. Upon information and belief, this failure to disclose documents pertaining to the MLBA Program was a material omission made with an intent to deceive the USPTO which constitutes inequitable conduct.

154. Upon information and belief, the Island Plaintiffs, named inventors, or attorneys, agents, or representatives of the Island Plaintiffs who were associated with the filing and prosecution of the applications that led to the issuance of the '286, '551, and '350 Patents knowingly and intentionally withheld material information from the USPTO with regards to the MLBA Program, including but not limited to the iMoneyNet Article. The MLBA Program was on sale and/or in public use more than one year prior to the filing dates of the applications that resulted in the '286, '551, and '350 Patents and information about the MLBA Program was material to the patentability of one or more of the claims of the applications that resulted in the '286, '551, and '350 Patents. Upon information and belief, during the prosecution of the applications that led to the '286, '551, and '350 Patents, with the intent to deceive the USPTO, the Island Plaintiffs, named inventors, or attorneys, agents, or representatives of the Island Plaintiffs who were associated with the filing and prosecution of the applications that led to the issuance of the '286, '551, and '350 Patents were aware of material information regarding the MLBA Program and failed to disclose such information. This constitutes inequitable conduct, which renders the '286, '551, and '350 Patents unenforceable.

F. Failure to Disclose Information Regarding Deposit Sweep Services

155. Upon information and belief, the Island Plaintiffs, named inventors, or attorneys, agents, or representatives of the Island Plaintiffs who were associated with the filing and prosecution of the applications that led to the issuance of the '231 Patent knowingly and intentionally withheld material information from the USPTO regarding deposit sweep services, including without limitation a letter from William W. Wiles (Secretary of the Federal Reserve) dated June 22, 1983, a letter from Michael Bradford (General Counsel for the Federal Reserve Board) dated November 16, 1984, letters from Oliver I. Ireland (Associate General Counsel of the Federal Reserve Board) dated June 22, 1988, February 7, 1995, August 1, 1995, August 30, 1995, and October 18, 1996. Each of these printed publications was material to the patentability of one or more of the claims of the application that resulted in the '231 Patent. Upon information and belief, during the prosecution of the applications that led to the '231 Patent, with the intent to deceive the USPTO, the Island Plaintiffs, named inventors, or attorneys, agents, or representatives of the Island Plaintiffs who were associated with the filing and prosecution of the applications that led to the issuance of the '231 Patent were aware of each of the printed publications and failed to disclose them. This constitutes inequitable conduct that would render the '231 Patent unenforceable. Under the doctrine of infectious unenforceability, this inequitable conduct during the prosecution of the '231 Patent renders unenforceable later-filed applications, including the applications that led to the '286, '551, and '350 Patents.

156. There exists an actual and justiciable controversy between DBTCA and the Island Plaintiffs as to whether the '286, '551 and '350 Patents are unenforceable. This controversy is of sufficient immediacy and reality to warrant the issuance of a declaratory judgment.

157. Pursuant to 28 U.S.C. §§ 2201 and 2202, DBTCA is entitled to a declaratory judgment that the '286, '551, and '350 Patents are unenforceable, and any other relief that the Court deems necessary or proper.

**PRAYER FOR RELIEF**

WHEREFORE, DBTCA prays for the following:

- a. A declaration that DBTCA does not infringe any valid claims of the '286, '551 and '350 Patents;
- b. A declaration that each and every claim of the '286, '551, and '350 Patents is invalid;
- c. A declaration that the '286, '551, and '350 Patents are each unenforceable;
- d. Dismissal of all of Island Plaintiffs' claims in their entirety with prejudice;
- e. A judgment that this is an "exceptional case" and an award of DBTCA's reasonable attorneys' fees, expenses, and costs in this action under 35 U.S.C. § 285; and
- f. An award of such other relief as the Court may deem appropriate and just under the circumstances.

**DEMAND FOR JURY TRIAL**

DBTCA demands a trial by jury of all issues set forth herein pursuant to Fed. R. Civ. P.

38.

DATED: June 25, 2009

Respectfully Submitted,

By: 

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Americas*

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

ISLAND INTELLECTUAL PROPERTY LLC,  
LIDS CAPITAL LLC, DOUBLE ROCK  
CORPORATION, and INTRASWEEP LLC,

Plaintiffs,

v.

PROMONTORY INTERFINANCIAL  
NETWORK, LLC, MBSC SECURITIES  
CORPORATION, DEUTSCHE BANK AG,  
DEUTSCHE BANK TRUST COMPANY  
AMERICAS, and TOTAL BANK SOLUTIONS,  
LLC,

Defendants.

Civil Action No. 09 Civ. 2675 (VM)

**TOTAL BANK SOLUTIONS, LLC's  
ANSWER TO CONSOLIDATED  
FIRST AMENDED COMPLAINT  
AND COUNTERCLAIMS**

**JURY TRIAL DEMANDED**

Total Bank Solutions, LLC ("TBS"), by and through its undersigned attorneys, respectively files this Answer to the Consolidated First Amended Complaint filed by Plaintiffs Island Intellectual Property LLC ("Island IP"), LIDs Capital LLC ("LIDs Capital"), Double Rock Corporation ("Double Rock"), and Intrasweep LLC ("Intrasweep") (collectively, the "Island Plaintiffs") and Counterclaims against the Island Plaintiffs, as follows.

**ANSWER TO CONSOLIDATED FIRST AMENDED COMPLAINT**

**NATURE OF THE ACTION**

1. TBS admits only that the Island Plaintiffs purport that this is an action for patent infringement in paragraph 1. TBS denies any and all remaining allegations of paragraph 1.

A. TBS admits only that the Island Plaintiffs purport in paragraph 1A of the Consolidated First Amended Complaint that this is an action for patent infringement arising out of Defendant Promontory Interfinancial Network, LLC's ("Promontory"), Defendant MBSC Securities Corporation's ("MBSC"), Defendant Deutsche Bank AG's

("DBAG"), Defendant Deutsche Bank Trust Company Americas ("DBTCA"), and Defendant TBS's alleged infringement of U.S. Patent No. 7,509,286. TBS denies any and all remaining allegations of paragraph 1A.

B. TBS admits only that the Island Plaintiffs purport in paragraph 1B of the Consolidated First Amended Complaint that this is an action for patent infringement arising out of Defendant Promontory's, Defendant DBAG's, Defendant DBTCA's, and Defendant TBS's alleged infringement of U.S. Patent No. 7,519,551. TBS denies any and all remaining allegations of paragraph 1B.

C. TBS admits only that the Island Plaintiffs purport in paragraph 1C of the Consolidated First Amended Complaint that this is an action for patent infringement arising out of Defendant DBAG's, Defendant DBTCA's, and Defendant TBS's alleged infringement of U.S. Patent No. 7,536,350. TBS denies any and all remaining allegations of paragraph 1C.

2. TBS only admits that the Island Plaintiffs purport in paragraph 1 of the Consolidated First Amended Complaint that the Consolidated First Amended Complaint asserts claims. TBS denies any and all remaining allegations of paragraph 2.

A. TBS admits only that the Island Plaintiffs purport in paragraph 2A of the Consolidated First Amended Complaint that the Consolidated First Amended Complaint asserts claims against Defendant Promontory, Defendant MBSC, Defendant DBAG, Defendant DBTCA, and Defendant TBS arising from their alleged infringement of Claim 1 of U.S. Patent No. 7,509,286, issued on March 24, 2009, and entitled "Systems and Methods for Money Fund Banking with Flexible Interest Allocation" ("the '286 Patent"). TBS denies any and all remaining allegations of paragraph 2A.

B. TBS admits only that the Island Plaintiffs purport in paragraph 2B of the Consolidated First Amended Complaint that the Consolidated First Amended Complaint asserts claims against Defendant Promontory arising from its alleged infringement of Claim 18 of U.S. Patent No. 7,519,551, entitled “Systems and Methods for Administering Return Sweep Accounts” (“the ’551 Patent”). TBS denies any and all remaining allegations of paragraph 2B.

C. TBS admits only that the Island Plaintiffs purport in paragraph 2C of the Consolidated First Amended Complaint that the Consolidated First Amended Complaint asserts claims against Defendant DBAG, Defendant DBTCA, and Defendant TBS arising from their alleged infringement of Claim 1 of the ’551 Patent. TBS denies any and all remaining allegations of paragraph 2C.

D. TBS admits only that the Island Plaintiffs purport in paragraph 2D of the Consolidated First Amended Complaint that the Consolidated First Amended Complaint asserts claims against Defendant DBAG, Defendant DBTCA, and Defendant TBS arising from their alleged infringement of Claim 12 of U.S. Patent No. 7,536,350, issued on May 19, 2009, and entitled “Systems and Methods for Providing Enhanced Account Management Services for Multiple Banks” (“the ’350 Patent”). TBS denies any and all remaining allegations of paragraph 2D.

3. Responding to paragraph 3 of the Consolidated First Amended Complaint, TBS admits that purported copies of the ’286 Patent, ’551 Patent, and ’350 Patent were attached to the Consolidated First Amended Complaint. TBS denies any and all remaining allegations of paragraph 3.



THE PARTIES

4. Responding to paragraph 4 of the Consolidated First Amended Complaint, TBS, upon information and belief, admits that Island IP is a limited liability company, organized and existing under the laws of the State of Delaware and that its principal place of business is located at 1250 Broadway, Thirty-Second Floor, New York, NY 10001, within this District. TBS denies any and all remaining allegations in paragraph 4.

5. Responding to paragraph 5 of the Consolidated First Amended Complaint, TBS, upon information and belief, admits that LIDs Capital is a limited liability company, organized and existing under the laws of the State of Delaware and that its principal place of business is located at 1250 Broadway, Thirty-Second Floor, New York, NY 10001, within this District. TBS denies any and all remaining allegations in paragraph 5.

6. Responding to paragraph 6 of the Consolidated First Amended Complaint, TBS, upon information and belief, admits that Double Rock is a corporation organized and existing under the laws of the State of New Jersey and that its principal place of business is located at 1250 Broadway, Thirty-Second Floor, New York, NY 10001, within this District. TBS denies any and all remaining allegations in paragraph 6.

7. Responding to paragraph 7 of the Consolidated First Amended Complaint, TBS, upon information and belief, admits that Intrasweep is a limited liability company, organized and existing under the laws of the State of Delaware and that its principal place of business is located at 1250 Broadway, Thirty-Second Floor, New York, NY 10001, within this District. TBS denies any and all remaining allegations in paragraph 7.

8. TBS is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 8 of the Consolidated First Amended Complaint, and, accordingly denies the same.

9. TBS is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 9 of the Consolidated First Amended Complaint, and, accordingly denies the same.

10. TBS is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 10 of the Consolidated First Amended Complaint, and, accordingly denies the same.

11. TBS is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 11 of the Consolidated First Amended Complaint, and, accordingly denies the same.

12. Responding to paragraph 12 of the Consolidated Amended Complaint, TBS admits that TBS is a corporation organized and existing under the laws of the State of New Jersey and that its principal place of business is located at Three University Plaza, Suite 320, Hackensack, NJ 07601. TBS denies any and all remaining allegations in paragraph 12.

#### JURISDICTION AND VENUE

13. TBS admits only that paragraph 13 of the Consolidated First Amended Complaint purports that this is an action for patent infringement arising under the patent statutes, 35 U.S.C. § 1 *et seq.* TBS denies any and all remaining allegations in paragraph 13.

14. Responding to paragraph 14 of the Consolidated First Amended Complaint, TBS admits that this Court has subject matter jurisdiction over patent claims under 28 U.S.C. §§ 1331 and 1338(a). TBS denies any and all remaining allegations in paragraph 14.

15. TBS is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 15 of the Consolidated First Amended Complaint, and, accordingly denies the same.

16. TBS is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 16 of the Consolidated First Amended Complaint, and, accordingly denies the same.

17. TBS is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 17 of the Consolidated First Amended Complaint, and, accordingly denies the same.

18. TBS is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 18 of the Consolidated First Amended Complaint, and, accordingly denies the same.

19. Responding to paragraph 19 of the Consolidated Amended Complaint, TBS admits that it is subject to the Court's personal jurisdiction. TBS also admits that it operates computer and record keeping services for the "Deutsche Bank Insured Deposit Program" ("Deutsche IDP"). TBS denies any and all of the remaining allegations in paragraph 19.

20. Responding to paragraph 20 of the Consolidated Amended Complaint, TBS admits that venue is proper in this Court pursuant to 28 U.S.C. §§ 1391 and 1400(b).

#### FACTUAL BACKGROUND

21. TBS is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 21 of the Consolidated First Amended Complaint, and, accordingly denies the same.

22. TBS is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 22 of the Consolidated First Amended Complaint, and, accordingly denies the same.

23. TBS is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 23 of the Consolidated First Amended Complaint, and, accordingly denies the same.

24. TBS is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 24 of the Consolidated First Amended Complaint, and, accordingly denies the same.

25. TBS is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 25 of the Consolidated First Amended Complaint, and, accordingly denies the same.

26. TBS is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 26 of the Consolidated First Amended Complaint, and, accordingly denies the same.

27. TBS is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 27 of the Consolidated First Amended Complaint, and, accordingly denies the same.

28. TBS is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 28 of the Consolidated First Amended Complaint, and, accordingly denies the same.

#### THE PATENTS-IN-SUIT

29. TBS denies the allegations of paragraph 29 of the Consolidated Amended Complaint.

30. TBS denies the allegations of paragraph 30 of the Consolidated Amended Complaint.

31. TBS denies the allegations of paragraph 31 of the Consolidated Amended Complaint.

32. Responding to paragraph 32 of the Consolidated First Amended Complaint, upon information and belief, TBS admits that Island IP is a wholly-owned subsidiary of Double Rock and that it is the owner of all rights, title and interest in the '286 Patent, the '551 Patent, and the '350 Patent. TBS denies any and all remaining allegations of paragraph 32.

33. Responding to paragraph 33 of the Consolidated First Amended Complaint, TBS, upon information and belief, admits that LIDs Capital is a wholly-owned subsidiary of Double Rock. TBS is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of paragraph 33 of the Consolidated First Amended Complaint, and, accordingly denies the same.

34. Responding to paragraph 34 of the Consolidated First Amended Complaint, TBS, upon information and belief, admits that Intrasweep is a wholly-owned subsidiary of Double Rock. TBS is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 34 of the Consolidated First Amended Complaint, and, accordingly denies the same.

35. TBS is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 35 of the Consolidated First Amended Complaint, and, accordingly denies the same.

THE PROMONTORY AND DREYFUS INFRINGING PRODUCTS

36. TBS is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 36 of the Consolidated First Amended Complaint, and, accordingly denies the same.

37. TBS is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 37 of the Consolidated First Amended Complaint, and, accordingly denies the same.

38. TBS is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 38 of the Consolidated First Amended Complaint, and, accordingly denies the same.

39. TBS is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 39 of the Consolidated First Amended Complaint, and, accordingly denies the same.

40. TBS is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 40 of the Consolidated First Amended Complaint, and, accordingly denies the same.

41. TBS is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 41 of the Consolidated First Amended Complaint, and, accordingly denies the same.

42. TBS is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 42 of the Consolidated First Amended Complaint, and, accordingly denies the same.

43. TBS is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 43 of the Consolidated First Amended Complaint, and, accordingly denies the same.

THE DEUTSCHE DEFENDANTS ALLEGEDLY INFRINGING PRODUCTS

44. Responding to paragraph 44 of the Consolidated First Amended Complaint, TBS admits that it operates Deutsche IDP within the United States. TBS denies any and all remaining allegations of paragraph 44.

45. Responding to paragraph 45 of the Consolidated First Amended Complaint, TBS admits that TBS is a financial data processing company that provides the computer and record keeping services for the Deutsche IDP. TBS denies any and all remaining allegations of paragraph 45.

46. TBS denies the allegations of paragraph 46 to the Consolidated First Amended Complaint.

47. Responding to paragraph 47 of the Consolidated First Amended Complaint, TBS admits that it does not have a license or other authorization from any of the Island Plaintiffs to practice the claims set forth in the '286 Patent. TBS denies any and all remaining allegations in paragraph 47.

48. TBS denies the allegations of paragraph 48 to the Consolidated First Amended Complaint.

49. Responding to paragraph 49 of the Consolidated First Amended Complaint, TBS admits that it does not have a license or other authorization from any of the Island Plaintiffs to practice the claims set forth in the '551 Patent. TBS denies any and all remaining allegations in paragraph 49.

50. TBS denies the allegations of paragraph 50 to the Consolidated First Amended Complaint.

51. Responding to paragraph 51 of the Consolidated First Amended Complaint, TBS admits that it does not have a license or other authorization from any of the Island Plaintiffs to practice the claims set forth in the '350 Patent. TBS denies any and all remaining allegations in paragraph 51.

52. TBS is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 52 of the Consolidated First Amended Complaint, and, accordingly denies the same.

COUNT ONE

(By Plaintiffs Island IP, LIDs Capital and Double Rock for Patent Infringement by the Defendant Promontory and Defendant MBSC of the '286 Patent)

53. Responding to paragraph 53 of the Consolidated Amended Complaint, TBS admits only that the Island Plaintiffs purport to repeat and reallege the allegations of paragraphs 1 through 52 of their claims and TBS incorporates its responses thereto as if fully set forth herein.

54. TBS is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 54 of the Consolidated First Amended Complaint, and, accordingly denies the same.

55. TBS is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 55 of the Consolidated First Amended Complaint, and, accordingly denies the same.

56. TBS is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 56 of the Consolidated First Amended Complaint, and, accordingly denies the same.



57. TBS is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 57 of the Consolidated First Amended Complaint, and, accordingly denies the same.

COUNT TWO

(By Plaintiffs Island IP, LIDs Capital and Double Rock for Patent Infringement by the Deutsche Defendants of the '286 Patent)

58. Responding to paragraph 58 of the Consolidated Amended Complaint, TBS admits only that the Island Plaintiffs purport to repeat and reallege the allegations of paragraphs 1 through 52 of their claims and TBS incorporates its responses thereto as if fully set forth herein.

59. TBS denies the allegations of paragraph 59 to the Consolidated First Amended Complaint.

60. TBS denies the allegations of paragraph 60 to the Consolidated First Amended Complaint.

61. TBS denies the allegations of paragraph 61 to the Consolidated First Amended Complaint.

62. TBS denies the allegations of paragraph 62 to the Consolidated First Amended Complaint.

COUNT THREE

(By Plaintiffs Island IP, LIDs Capital and Double Rock for Patent Infringement by Defendant Promontory of the '551 Patent)

63. Responding to paragraph 63 of the Consolidated Amended Complaint, TBS admits only that the Island Plaintiffs purport to repeat and reallege the allegations of paragraphs

1 through 52 of their claims and TBS incorporates its responses thereto as if fully set forth herein.

64. TBS is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 64 of the Consolidated First Amended Complaint, and, accordingly denies the same.

65. TBS is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 65 of the Consolidated First Amended Complaint, and, accordingly denies the same.

66. TBS is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 66 of the Consolidated First Amended Complaint, and, accordingly denies the same.

67. TBS is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 67 of the Consolidated First Amended Complaint, and, accordingly denies the same.

68. TBS is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 68 of the Consolidated First Amended Complaint, and, accordingly denies the same.

#### COUNT FOUR

(By Plaintiffs Island IP, LIDs Capital and Double Rock for Patent Infringement by the Deutsche Defendants of the '286 Patent)

69. Responding to paragraph 69 of the Consolidated Amended Complaint, TBS admits only that the Island Plaintiffs purport to repeat and reallege the allegations of paragraphs

1 through 52 of their claims and TBS incorporates its responses thereto as if fully set forth herein.

70. TBS denies the allegations of paragraph 70 to the Consolidated First Amended Complaint.

71. TBS denies the allegations of paragraph 71 to the Consolidated First Amended Complaint.

72. Responding to paragraph 72 of the Consolidated Amended Complaint, TBS admits that it has been on notice of a published Application which matured into the '551 Patent since at least on or about October 18, 2005. TBS denies any and all remaining allegations of paragraph 72.

73. TBS denies the allegations of paragraph 73 to the Consolidated First Amended Complaint.

74. TBS denies the allegations of paragraph 74 to the Consolidated First Amended Complaint.

#### COUNT FIVE

(By Plaintiffs Island IP, LIDs Capital and Double Rock for Patent Infringement by the Deutsche Defendants of the '286 Patent)

75. Responding to paragraph 75 of the Consolidated Amended Complaint, TBS admits only that the Island Plaintiffs purport to repeat and reallege the allegations of paragraphs 1 through 52 of their claims and TBS incorporates its responses thereto as if fully set forth herein.

76. TBS denies the allegations of paragraph 76 to the Consolidated First Amended Complaint.

77. TBS denies the allegations of paragraph 77 to the Consolidated First Amended Complaint.

78. TBS denies the allegations of paragraph 78 to the Consolidated First Amended Complaint.

79. TBS denies the allegations of paragraph 79 to the Consolidated First Amended Complaint.

PRAYER FOR RELIEF

I. WITH RESPECT TO THE '286 PATENT

A. TBS denies that the Island Plaintiffs are entitled to the relief requested in Paragraph I.A.

B. TBS denies that the Island Plaintiffs are entitled to the relief requested in Paragraph I.B.

C. TBS denies that the Island Plaintiffs are entitled to the relief requested in Paragraph I.C.

D. TBS denies that the Island Plaintiffs are entitled to the relief requested in Paragraph I.D.

II. WITH RESPECT TO THE '551 PATENT

A. TBS denies that the Island Plaintiffs are entitled to the relief requested in Paragraph II.A.

B. TBS denies that the Island Plaintiffs are entitled to the relief requested in Paragraph II.B.

C. TBS denies that the Island Plaintiffs are entitled to the relief requested in Paragraph II.C.

D. TBS denies that the Island Plaintiffs are entitled to the relief requested in Paragraph II.D.

E. TBS denies that the Island Plaintiffs are entitled to the relief requested in Paragraph II.E.

III. WITH RESPECT TO THE '350 PATENT

A. TBS denies that the Island Plaintiffs are entitled to the relief requested in Paragraph III.A.

B. TBS denies that the Island Plaintiffs are entitled to the relief requested in Paragraph III.B.

C. TBS denies that the Island Plaintiffs are entitled to the relief requested in Paragraph III.C.

D. TBS denies that the Island Plaintiffs are entitled to the relief requested in Paragraph III.D.

80. TBS admits that the Island Plaintiffs have requested a trial by jury in paragraph 80 of the Consolidated First Amended Complaint.

## AFFIRMATIVE DEFENSES

### First Affirmative Defense (Non-Infringement)

81. The Island Plaintiffs are not entitled to any relief against TBS because TBS is not infringing and has not infringed, directly, by inducement, contributorily or in any way, any valid claims of the '286, '551, and '350 Patents.

### Second Affirmative Defense (Invalidity)

82. Upon information and belief, one or more claims of the '286, '551, and '350 Patents are invalid at least for failure to meet the requirements of Title 35 of the United States Code, particularly, but not limited to, 35 U.S.C. §§ 101, 102, 103, and 112.

### Third Affirmative Defense (Unenforceability)

83. Upon information and belief, and on the basis of conduct in the United States Patent and Trademark Office ("USPTO"), during the prosecution of the applications that matured into the '286, '551, and '350 Patents and other related applications, the Island Plaintiffs are barred from asserting the '286, '551, and '350 Patents against TBS for having engaged in inequitable conduct.

#### A. Failure to Disclose Material Prior Sales and Public Uses

84. Upon information and belief, the Island Plaintiffs, named inventors, or attorneys, agents, or representatives of the Island Plaintiffs who were associated with the prosecution of the applications that matured into the '286, '551 and '350 Patents and other related applications, knowingly and intentionally failed to disclose and made material misrepresentations regarding material prior sales and public uses, including but not limited to, the prior sale and public use of the Reserve Insured Deposits program. These failures to disclose and material misrepresentations were performed with an intent to deceive the USPTO.

85. The '286 Patent, filed on April 11, 2003, is a continuation-in-part of the '350 Patent, filed on March 6, 2003, and of the '551 Patent, filed on February 8, 2002. The '350 Patent is also a continuation-in-part of the '551 Patent. The '286, '551, and '350 Patents are all continuations-in-part of U.S. Application No. 09/677,535 ("the '535 Application"), filed on October 2, 2000. The '535 Application and the '551 Patent also are continuations-in-part of U.S. Patent No. 6,374,231, filed on October 21, 1998 ("the '231 Patent"). The '286, '551, and '350 Patents are therefore related to both the '535 Application and the '231 Patent.

86. Upon information and belief, Double Rock was formerly known as the Reserve Management Corporation ("Reserve"). Upon information and belief, the principals of Reserve were also the principals of a related entity, called The Reserve Funds. Upon information and belief, The Reserve Funds offered a program called Reserve Insured Deposits. Upon information and belief, the Reserve Insured Deposits program is prior art under 35 U.S.C. § 102(b) to the '231 Patent.

87. On September 21, 2001, Reserve filed a trademark application (Ser. No. 76/315,660) with the USPTO for the mark RESERVE INSURED DEPOSITS. Reserve's application specified that the mark was for "financial services, namely, providing insured money market account services," with a first use in commerce on October 9, 1997. On October 18, 2006, Reserve filed a request to change the date of the first use in commerce to December 31, 1997. In support of its request, Reserve attached an October 17, 2006 declaration by Bruce Bent II, which stated that the first use in commerce was actually October 23, 1997.

88. During the prosecution of the '286, '551, and '350 Patents, as well as during the prosecution of the '231 Patent, the Island Plaintiffs, named inventors, or attorneys, agents, or representatives of the Island Plaintiffs who were associated with the prosecution of these patents, submitted an information disclosure statement ("IDS"), in or around March 2007, disclosing an advertisement in the October 1997 issue of the periodical "Mutual Funds" by Reserve that

advertised an “FDIC insured money market account with free, unlimited, no minimum checking.” Upon information and belief, this advertisement was circulated as early as September 8, 1997. These IDSs included a February 27, 2007 declaration by Bruce Bent II, who was the senior vice president of Reserve at the time and is a named inventor of the ’231, ’286, ’551, and ’350 Patents, that stated that the first use in commerce of the Reserve Insured Deposits program was actually October 23, 1997 and that the October 9, 2007 date that was used in the trademark application was an error.

89. Upon information and belief, Bruce Bent II’s February 27, 2007 declaration referred to and attached a true copy of the “Mutual Funds” advertisement. Upon information and belief, this advertisement advertised that the Reserve Insured Deposits Accounts offered “high interest (4.26% as of 8/6/97).”

90. Upon information and belief, the Reserve Insured Deposits program was in use in commerce as early as August 1997. In a 2004 report entitled “Brokerage Cash Sweep Options: The Shift from Money Funds to FDIC-Insured Bank Deposit Accounts,” published by iMoneyNet and sponsored by The Reserve Funds (“iMoneyNet Article”), the report states that “Money fund-inventor The Reserve Funds introduced Reserve Insured Deposits® in August 1997.” Upon information and belief, the Island Plaintiffs, named inventors, or attorneys, agents, or representatives of the Island Plaintiffs who were associated with the prosecution of the ’231, ’286, ’551 and ’350 Patents, knowingly and intentionally failed to disclose the iMoneyNet Article. This constitutes inequitable conduct, which renders the ’286, ’551, and ’350 Patents unenforceable.

91. Upon information and belief, the Reserve Insured Deposits program, as it existed in August 1997, was within the scope of the ’231 Patent and was put on sale and in public use more than one year prior to the filing date of October 21, 1998. Upon information and belief, the Island Plaintiffs, named inventors, or attorneys, agents, or representatives of the Island Plaintiffs



who were associated with the prosecution of the '231 Patent, knowingly and intentionally failed to disclose and made material misrepresentations regarding the sales and public uses of the Reserve Insured Deposits program prior to October 21, 1997. Upon information and belief, the failures to disclose information and material misrepresentations, including, but not limited to, the examples provided in paragraphs 84 through 90, were made with an intent to deceive the USPTO and thus constitute inequitable conduct that would render the '231 Patent unenforceable. Under the doctrine of infectious unenforceability, this inequitable conduct during the prosecution of the '231 Patent renders unenforceable later-filed applications, including the applications that led to the '286, '551, and '350 Patents.

**B. Material Misrepresentations Regarding The First Use In Commerce Of The Reserve Insured Deposits Program**

92. Upon information and belief, the Island Plaintiffs, named inventors, or attorneys, agents, or representatives of the Island Plaintiffs who were associated with the filing and prosecution of the application that led to the issuance of the '286, '551, and '350 Patents and other related applications knowingly and intentionally made material misrepresentations to the USPTO with the intent to deceive the USPTO regarding the first use in commerce of the Reserve Insured Deposits program.

93. Among other things, upon information and belief, on March 10, 2008, the USPTO rejected the application that eventually led to the issuance of the '286 Patent under 35 U.S.C. § 102(b), citing a prior public use of the Reserve Insured Deposits program. In response, in an Amendment dated May 9, 2008, Reserve quoted language from Bruce Bent II's declaration from February 27, 2007, that stated that the first use in commerce was October 23, 1997. This material misrepresentation evidences an intent to deceive the USPTO and constitutes inequitable conduct, which renders the '286 Patent unenforceable.

94. Among other things, upon information and belief, on April 5, 2007, the USPTO rejected the application that eventually led to the issuance of the '551 Patent under 35 U.S.C. § 102(b), and requested information regarding the prior public use of the Reserve Insured Deposits program. In response, in an Amendment dated October 5, 2007, Reserve quoted language from Bruce Bent II's declaration from February 27, 2007, that stated that the first use in commerce was October 23, 1997. This material misrepresentation evidences an intent to deceive the USPTO and constitutes inequitable conduct, which renders the '551 Patent unenforceable.

95. Among other things, upon information and belief, on March 10, 2008, the USPTO rejected the application that eventually led to the issuance of the '350 Patent under 35 U.S.C. § 102(b), citing a prior public use of the Reserve Insured Deposits program. In response, in an Amendment dated May 9, 2008, Reserve quoted language from Bruce Bent II's declaration from February 27, 2007, that stated that the first use in commerce was October 23, 1997. This material misrepresentation evidences an intent to deceive the USPTO and constitutes inequitable conduct, which renders the '350 Patent unenforceable.

C. Failure to Disclose the Original 1983 CMA/ISA Service

96. Upon information and belief, the Island Plaintiffs, named inventors, or attorneys, agents, or representatives of the Island Plaintiffs who were associated with the prosecution of the applications that matured into the '286, '551 and '350 Patents and other related applications, knowingly, and with the intent to deceive the USPTO, failed to disclose material information regarding the Insured Savings Account feature in Merrill Lynch's Cash Management Account Service.

97. Upon information and belief, the first deposit sweep service was developed and offered by Merrill Lynch, Pierce, Fenner & Smith ("Merrill Lynch"). As a broker-dealer, Merrill Lynch offered this service to its brokerage customers at least as early as 1983 as a feature of Merrill Lynch's Cash Management Account ("CMA"), brokerage account with cash

management features. Merrill Lynch called this feature the Insured Savings Account ("ISA") (collectively, "Original 1983 CMA/ISA Service"). Upon information and belief, details of the Original 1983 CMA/ISA Service are highly material to several, if not all, of the claim limitations in the '286, '551, and '350 Patents.

98. Upon information and belief, the Island Plaintiffs, named inventors, or attorneys, agents, or representatives of the Island Plaintiffs who were associated with the filing and prosecution of the applications that led to the issuance of the '286, '551, and '350 Patents knowingly and intentionally withheld material information from the USPTO with regards to the Original 1983 CMA/ISA Service, including but not limited to the iMoneyNet Article. The Original 1983 CMA/ISA Service was on sale and/or in public use more than one year prior to the filing dates of the applications that resulted in the '286, '551, and '350 Patents and information about the Original 1983 CMA/ISA Service was material to the patentability of one or more of the claims of the applications that resulted in the '286, '551, and '350 Patents. Upon information and belief, during the prosecution of the applications that led to the '286, '551, and '350 Patents, with the intent to deceive the USPTO, the Island Plaintiffs, named inventors, or attorneys, agents, or representatives of the Island Plaintiffs who were associated with the filing and prosecution of the applications that led to the issuance of the '286, '551, and '350 Patents were aware of material information about the Original 1983 CMA/ISA Service and failed to disclose material information about the Original 1983 CMA/ISA Service. This constitutes inequitable conduct, which renders the '286, '551, and '350 Patents unenforceable.

D. Failure to Disclose the 2000 CMA 2.0 Service

99. Upon information and belief, the Island Plaintiffs, named inventors, or attorneys, agents, or representatives of the Island Plaintiffs who were associated with the prosecution of the applications that matured into the '286, '551 and '350 Patents and other related applications,

knowingly, and with the intent to deceive the USPTO, failed to disclose material information regarding the Merrill Lynch Cash Management Account 2.0.

100. Upon information and belief, at least as early as 1998, Merrill Lynch began developing a second deposit sweep service. Merrill Lynch offered this second service to its brokerage customers at least as early as 2000 under the name Cash Management Account 2.0 ("2000 CMA 2.0 Service"). Upon information and belief, details of the 2000 CMA 2.0 Service are highly material to several, if not all, of the claim limitations in the '286, '551, and '350 Patents.

101. Upon information and belief, the Island Plaintiffs, named inventors, or attorneys, agents, or representatives of the Island Plaintiffs who were associated with the filing and prosecution of the applications that led to the issuance of the '286, '551, and '350 Patents knowingly and intentionally withheld material information from the USPTO with regards to the 2000 CMA 2.0 Service, including but not limited to the iMoneyNet Article. The 2000 CMA 2.0 Service was on sale and/or in public use more than one year prior to the filing dates of the applications that resulted in the '286, '551, and '350 Patents and information about the 2000 CMA 2.0 Service was material to the patentability of one or more of the claims of the applications that resulted in the '286, '551, and '350 Patents. This constitutes inequitable conduct, which renders the '286, '551, and '350 Patents unenforceable.

E. Failure to Disclose And Material Misrepresentations Regarding the Merrill Lynch Banking Advantage Program

102. Upon information and belief, the Island Plaintiffs, named inventors, or attorneys, agents, or representatives of the Island Plaintiffs who were associated with the prosecution of the applications that matured into the '286, '551 and '350 Patents and other related applications, knowingly, and with the intent to deceive the USPTO, failed to disclose material information regarding the Merrill Lynch Banking Advantage Program.

103. Upon information and belief, at least as early as 2000, Merrill Lynch began offering another related program called the Merrill Lynch Banking Advantage Program (“MLBA Program”). Upon information and belief, details of the MLBA Program are highly material to several, if not all, of the claim limitations in the ’286, ’551, and ’350 Patents.

104. Upon information and belief, the Island Plaintiffs, named inventors, or attorneys, agents, or representatives of the Island Plaintiffs who were associated with the filing and prosecution of the then-pending application that led to the issuance of the ’551 Patent, disclosed two material references regarding the MLBA Program to the USPTO in an IDS on March 3, 2009. In disclosing the two material references, the Island Plaintiffs certified that “to the knowledge of the undersigned, after making reasonable inquiry, no item of information contained in the [IDS] was known to any individual designated in 37 C.F.R. § 1.56(c) more than three months prior to the filing of the [IDS].” Upon information and belief, Bruce Bent II, one of the named inventors of the ’286, ’551, and ’350 Patents, was aware of the MLBA Program long before the filing of the IDS, as evidenced by his comments about the program in a November 1, 2000 article in the periodical, “On Wall Street.” Upon information and belief, the Island Plaintiffs, named inventors, or attorneys, agents, or representatives of the Island Plaintiffs were also aware of the MLBA Program more than three months before the filing of the March 3, 2009 IDS, as evidenced by the iMoneyNet Article. Upon information and belief, this material misrepresentation was made with an intent to deceive the USPTO and constitutes inequitable conduct which renders the ’551 Patent unenforceable.

105. During the prosecution of the ’551 Patent, the Island Plaintiffs were notified that the information contained in the March 3, 2009 IDS would not be considered by the USPTO because it was filed after the issue fee was paid. Despite this notice, the Island Plaintiffs failed to file a petition to withdraw the ’551 Patent from issuing and failed to file a Request for Continued Examination (“RCE”) to allow the USPTO to consider the two documents that disclosed material and non-cumulative information about the MLBA Program. Upon information and belief, this

failure to disclose documents pertaining to the MLBA Program was a material omission made with an intent to deceive the USPTO which constitutes inequitable conduct.

106. Upon information and belief, the Island Plaintiffs, named inventors, or attorneys, agents, or representatives of the Island Plaintiffs who were associated with the filing and prosecution of the applications that led to the issuance of the '286, '551, and '350 Patents knowingly and intentionally withheld material information from the USPTO with regards to the MLBA Program, including but not limited to the iMoneyNet Article. The MLBA Program was on sale and/or in public use more than one year prior to the filing dates of the applications that resulted in the '286, '551, and '350 Patents and information about the MLBA Program was material to the patentability of one or more of the claims of the applications that resulted in the '286, '551, and '350 Patents. Upon information and belief, during the prosecution of the applications that led to the '286, '551, and '350 Patents, with the intent to deceive the USPTO, the Island Plaintiffs, named inventors, or attorneys, agents, or representatives of the Island Plaintiffs who were associated with the filing and prosecution of the applications that led to the issuance of the '286, '551, and '350 Patents were aware of material information regarding the MLBA Program and failed to disclose such information. This constitutes inequitable conduct, which renders the '286, '551, and '350 Patents unenforceable.

F. Failure to Disclose Information Regarding Deposit Sweep Services

107. Upon information and belief, the Island Plaintiffs, named inventors, or attorneys, agents, or representatives of the Island Plaintiffs who were associated with the filing and prosecution of the applications that led to the issuance of the '231 Patent knowingly and intentionally withheld material information from the USPTO regarding deposit sweep services, including without limitation a letter from William W. Wiles (Secretary of the Federal Reserve) dated June 22, 1983, a letter from Michael Bradford (General Counsel for the Federal Reserve Board) dated November 16, 1984, letters from Oliver I. Ireland (Associate General Counsel of

the Federal Reserve Board) dated June 22, 1988, February 7, 1995, August 1, 1995, August 30, 1995, and October 18, 1996. Each of these printed publications was material to the patentability of one or more of the claims of the application that resulted in the '231 Patent. Upon information and belief, during the prosecution of the applications that led to the '231 Patent, with the intent to deceive the USPTO, the Island Plaintiffs, named inventors, or attorneys, agents, or representatives of the Island Plaintiffs who were associated with the filing and prosecution of the applications that led to the issuance of the '231 Patent were aware of each of the printed publications and failed to disclose them. This constitutes inequitable conduct that would render the '231 Patent unenforceable. Under the doctrine of infectious unenforceability, this inequitable conduct during the prosecution of the '231 Patent renders unenforceable later-filed applications, including the applications that led to the '286, '551, and '350 Patents.

### **TBS'S COUNTERCLAIMS**

#### **THE PARTIES**

108. TBS is a corporation organized and existing under the laws of the State of New Jersey. TBS's principal place of business is located at Three University Plaza, Suite 320, Hackensack, NJ 07601.

109. Upon information and belief, Island IP is a limited liability company organized and existing under the laws of the State of Delaware. Island IP's principal place of business is located at 1250 Broadway, Thirty-Second Floor, New York, NY 10001, within this District.

110. Upon information and belief, LIDs Capital is a limited liability company, organized and existing under the laws of the State of Delaware. LIDs Capital's principal place of business is located at 1250 Broadway, Thirty-Second Floor, New York, NY 10001, within this District.

111. Upon information and belief, Double Rock is corporation, organized and existing under the laws of the State of New Jersey. Double Rock's principal place of business is located at 1250 Broadway, Thirty-Second Floor, New York, NY 10001, within this District.

112. Upon information and belief, Intrasweep is a limited liability company, organized and existing under the laws of the State of Delaware. Intrasweep's principal place of business is located at 1250 Broadway, Thirty-Second Floor, New York, NY 10001, within this District.

#### JURISDICTION AND VENUE

113. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331, 1338(a), 2201 and 2202.

114. Upon information and belief, Island IP is subject to personal jurisdiction in this judicial district because Island IP regularly conducts and transacts business in this judicial district and because its principal place of business is within this judicial district.

115. Upon information and belief, LIDs Capital is subject to personal jurisdiction in this judicial district because LIDs Capital regularly conducts and transacts business in this judicial district and because its principal place of business is within this judicial district.

116. Upon information and belief, Double Rock is subject to personal jurisdiction in this judicial district because Double Rock regularly conducts and transacts business in this judicial district and because its principal place of business is within this judicial district.

117. Upon information and belief, Intrasweep is subject to personal jurisdiction in this judicial district because Intrasweep regularly conducts and transacts business in this judicial district and because its principal place of business is within this judicial district.

118. Venue is appropriate in this judicial district pursuant to 28 U.S.C. §§ 1391 and 1400(b).



CLAIMS FOR RELIEF

COUNT I

(Declaratory Judgment of Non-Infringement of U.S. Patent Nos. 7,509,286, 7,519,551, and 7,536,350)

119. The allegations contained in paragraphs 108 through 118 of this counterclaim are incorporated by reference herein with the same force and effect as if set forth in full below.

120. Upon information and belief, Island IP is the owner of all right, title and interest in and to the '286, '551 and '350 Patents.

121. TBS does not directly infringe, contribute to the infringement of, or induce infringement of, any valid claims of the '286, '551, and '350 Patents.

122. The Island Plaintiffs have charged in their Consolidated First Amended Complaint that TBS has been and still is infringing the '286, '551 and '350 Patents in light of its activities in connection with the Deutsche IDP.

123. TBS denies that TBS has been or is infringing, directly or indirectly, any of the claims of the '286, '551 and '350 Patents or otherwise engaging in any wrongdoing with respect to such patents. TBS has averred, and continues to aver, that it has not infringed and is not presently infringing any valid or enforceable claims contained in the '286, '551 and '350 Patents and it is not liable for damages, injunctive or other relief arising from any such alleged infringement.

124. There exists an actual and justiciable controversy between TBS and the Island Plaintiffs as to whether TBS infringes any claims of the '286, '551 and '350 Patents. This controversy is of sufficient immediacy and reality to warrant the issuance of a declaratory judgment.

125. Pursuant to 28 U.S.C. §§ 2201 and 2202, TBS is entitled to a declaratory judgment that it does not infringe any claim of the '286, '551, and '350 Patents.

COUNT II

(Declaratory Judgment of Invalidity of U.S. Patent Nos. 7,509,286, 7,519,551, and 7,536,350)

126. The allegations contained in paragraphs 108 through 125 of this counterclaim are incorporated by reference herein with the same force and effect as if set forth in full below.

127. Each and every claim of the '286, '551, and '350 Patents is invalid for failure to meet one or more of the requirements of Title 35 of the United States Code, particularly, but not limited to, 35 U.S.C. §§ 101, 102, 103, and 112.

128. There exists an actual and justiciable controversy between TBS and the Island Plaintiffs as to whether each and every claim of the '286, '551 and '350 Patents is invalid. This controversy is of sufficient immediacy and reality to warrant the issuance of a declaratory judgment.

129. Pursuant to 28 U.S.C. §§ 2201 and 2202, TBS is entitled to a declaratory judgment that each and every claim of the '286, '551, and '350 Patents is invalid.

COUNT III

(Declaratory Judgment of Unenforceability of U.S. Patent Nos. 7,509,286, 7,519,551, and 7,536,350)

130. The allegations contained in paragraphs 108 through 129 of this counterclaim are incorporated by reference herein with the same force and effect as if set forth in full below.

131. On information and belief, and on the basis of conduct in the United States Patent and Trademark Office ("USPTO"), during the prosecution of the applications that matured into

the '286, '551, and '350 Patents, the Island Plaintiffs are barred from asserting the '286, '551, and '350 Patents against the TBS for having engaged in inequitable conduct.

A. Failure to Disclose Material Prior Sales and Public Uses

132. Upon information and belief, the Island Plaintiffs, named inventors, or attorneys, agents, or representatives of the Island Plaintiffs who were associated with the prosecution of the applications that matured into the '286, '551 and '350 Patents and other related applications, knowingly and intentionally failed to disclose and made material misrepresentations regarding material prior sales and public uses, including but not limited to, the prior sale and public use of the Reserve Insured Deposits program. These failures to disclose and material misrepresentations were performed with an intent to deceive the USPTO.

133. The '286 Patent, filed on April 11, 2003, is a continuation-in-part of the '350 Patent, filed on March 6, 2003, and of the '551 Patent, filed on February 8, 2002. The '350 Patent is also a continuation-in-part of the '551 Patent. The '286, '551, and '350 Patents are all continuations-in-part of U.S. Application No. 09/677,535 ("the '535 Application"), filed on October 2, 2000. The '535 Application and the '551 Patent also are continuations-in-part of U.S. Patent No. 6,374,231, filed on October 21, 1998 ("the '231 Patent"). The '286, '551, and '350 Patents are therefore related to both the '535 Application and the '231 Patent.

134. Upon information and belief, Double Rock was formerly known as the Reserve Management Corporation ("Reserve"). Upon information and belief, the principals of Reserve were also the principals of a related entity, called The Reserve Funds. Upon information and belief, The Reserve Funds offered a program called Reserve Insured Deposits. Upon information and belief, the Reserve Insured Deposits program is prior art under 35 U.S.C. § 102(b) to the '231 Patent.

135. On September 21, 2001, Reserve filed a trademark application (Ser. No. 76/315,660) with the USPTO for the mark RESERVE INSURED DEPOSITS. Reserve's application specified that the mark was for "financial services, namely, providing insured money market account services," with a first use in commerce on October 9, 1997. On October 18, 2006, Reserve filed a request to change the date of the first use in commerce to December 31, 1997. In support of its request, Reserve attached an October 17, 2006 declaration by Bruce Bent II, which stated that the first use in commerce was actually October 23, 1997.

136. During the prosecution of the '286, '551, and '350 Patents, as well as during the prosecution of the '231 Patent, the Island Plaintiffs, named inventors, or attorneys, agents, or representatives of the Island Plaintiffs who were associated with the prosecution of these patents, submitted an information disclosure statement ("IDS"), in or around March 2007, disclosing an advertisement in the October 1997 issue of the periodical "Mutual Funds" by Reserve that advertised an "FDIC insured money market account with free, unlimited, no minimum checking." Upon information and belief, this advertisement was circulated as early as September 8, 1997. These IDSs included a February 27, 2007 declaration by Bruce Bent II, who was the senior vice president of Reserve at the time and is a named inventor of the '231, '286, '551, and '350 Patents, that stated that the first use in commerce of the Reserve Insured Deposits program was actually October 23, 1997 and that the October 9, 2007 date that was used in the trademark application was an error.

137. Upon information and belief, Bruce Bent II's February 27, 2007 declaration referred to and attached a true copy of the "Mutual Funds" advertisement. Upon information and belief, this advertisement advertised that the Reserve Insured Deposits Accounts offered "high interest (4.26% as of 8/6/97)."

138. Upon information and belief, the Reserve Insured Deposits program was in use in commerce as early as August 1997. In a 2004 report entitled "Brokerage Cash Sweep Options:

The Shift from Money Funds to FDIC-Insured Bank Deposit Accounts,” published by iMoneyNet and sponsored by The Reserve Funds (“iMoneyNet Article”), the report states that “Money fund-inventor The Reserve Funds introduced Reserve Insured Deposits® in August 1997.” Upon information and belief, the Island Plaintiffs, named inventors, or attorneys, agents, or representatives of the Island Plaintiffs who were associated with the prosecution of the ’231, ’286, ’551 and ’350 Patents, knowingly and intentionally failed to disclose the iMoneyNet Article. This constitutes inequitable conduct, which renders the ’286, ’551, and ’350 Patents unenforceable.

139. Upon information and belief, the Reserve Insured Deposits program, as it existed in August 1997, was within the scope of the ’231 Patent and was put on sale and in public use more than one year prior to the filing date of October 21, 1998. Upon information and belief, the Island Plaintiffs, named inventors, or attorneys, agents, or representatives of the Island Plaintiffs who were associated with the prosecution of the ’231 Patent, knowingly and intentionally failed to disclose and made material misrepresentations regarding the sales and public uses of the Reserve Insured Deposits program prior to October 21, 1997. Upon information and belief, the failures to disclose information and material misrepresentations, including, but not limited to, the examples provided in paragraphs 132 through 138, were made with an intent to deceive the USPTO and thus constitute inequitable conduct that would render the ’231 Patent unenforceable. Under the doctrine of infectious unenforceability, this inequitable conduct during the prosecution of the ’231 Patent renders unenforceable later-filed applications, including the applications that led to the ’286, ’551, and ’350 Patents.

**B. Material Misrepresentations Regarding The First Use In Commerce Of The Reserve Insured Deposits Program**

140. Upon information and belief, the Island Plaintiffs, named inventors, or attorneys, agents, or representatives of the Island Plaintiffs who were associated with the filing and prosecution of the application that led to the issuance of the ’286, ’551, and ’350 Patents and

other related applications knowingly and intentionally made material misrepresentations to the USPTO with the intent to deceive the USPTO regarding the first use in commerce of the Reserve Insured Deposits program.

141. Among other things, upon information and belief, on March 10, 2008, the USPTO rejected the application that eventually led to the issuance of the '286 Patent under 35 U.S.C. § 102(b), citing a prior public use of the Reserve Insured Deposits program. In response, in an Amendment dated May 9, 2008, Reserve quoted language from Bruce Bent II's declaration from February 27, 2007, that stated that the first use in commerce was October 23, 1997. This material misrepresentation evidences an intent to deceive the USPTO and constitutes inequitable conduct, which renders the '286 Patent unenforceable.

142. Among other things, upon information and belief, on April 5, 2007, the USPTO rejected the application that eventually led to the issuance of the '551 Patent under 35 U.S.C. § 102(b), and requested information regarding the prior public use of the Reserve Insured Deposits program. In response, in an Amendment dated October 5, 2007, Reserve quoted language from Bruce Bent II's declaration from February 27, 2007, that stated that the first use in commerce was October 23, 1997. This material misrepresentation evidences an intent to deceive the USPTO and constitutes inequitable conduct, which renders the '551 Patent unenforceable.

143. Among other things, upon information and belief, on March 10, 2008, the USPTO rejected the application that eventually led to the issuance of the '350 Patent under 35 U.S.C. § 102(b), citing a prior public use of the Reserve Insured Deposits program. In response, in an Amendment dated May 9, 2008, Reserve quoted language from Bruce Bent II's declaration from February 27, 2007, that stated that the first use in commerce was October 23, 1997. This material misrepresentation evidences an intent to deceive the USPTO and constitutes inequitable conduct, which renders the '350 Patent unenforceable.

C. Failure to Disclose the Original 1983 CMA/ISA Service

144. Upon information and belief, the Island Plaintiffs, named inventors, or attorneys, agents, or representatives of the Island Plaintiffs who were associated with the prosecution of the applications that matured into the '286, '551 and '350 Patents and other related applications, knowingly, and with the intent to deceive the USPTO, failed to disclose material information regarding the Insured Savings Account feature in Merrill Lynch's Cash Management Account Service.

145. Upon information and belief, the first deposit sweep service was developed and offered by Merrill Lynch, Pierce, Fenner & Smith ("Merrill Lynch"). As a broker-dealer, Merrill Lynch offered this service to its brokerage customers at least as early as 1983 as a feature of Merrill Lynch's Cash Management Account ("CMA"), brokerage account with cash management features. Merrill Lynch called this feature the Insured Savings Account ("ISA") (collectively, "Original 1983 CMA/ISA Service"). Upon information and belief, details of the Original 1983 CMA/ISA Service are highly material to several, if not all, of the claim limitations in the '286, '551, and '350 Patents.

146. Upon information and belief, the Island Plaintiffs, named inventors, or attorneys, agents, or representatives of the Island Plaintiffs who were associated with the filing and prosecution of the applications that led to the issuance of the '286, '551, and '350 Patents knowingly and intentionally withheld material information from the USPTO with regards to the Original 1983 CMA/ISA Service, including but not limited to the iMoneyNet Article. The Original 1983 CMA/ISA Service was on sale and/or in public use more than one year prior to the filing dates of the applications that resulted in the '286, '551, and '350 Patents and information about the Original 1983 CMA/ISA Service was material to the patentability of one or more of the claims of the applications that resulted in the '286, '551, and '350 Patents. Upon information and belief, during the prosecution of the applications that led to the '286, '551, and '350 Patents,

with the intent to deceive the USPTO, the Island Plaintiffs, named inventors, or attorneys, agents, or representatives of the Island Plaintiffs who were associated with the filing and prosecution of the applications that led to the issuance of the '286, '551, and '350 Patents were aware of material information about the Original 1983 CMA/ISA Service and failed to disclose material information about the Original 1983 CMA/ISA Service. This constitutes inequitable conduct, which renders the '286, '551, and '350 Patents unenforceable.

D. Failure to Disclose the 2000 CMA 2.0 Service

147. Upon information and belief, the Island Plaintiffs, named inventors, or attorneys, agents, or representatives of the Island Plaintiffs who were associated with the prosecution of the applications that matured into the '286, '551 and '350 Patents and other related applications, knowingly, and with the intent to deceive the USPTO, failed to disclose material information regarding the Merrill Lynch Cash Management Account 2.0.

148. Upon information and belief, at least as early as 1998, Merrill Lynch began developing a second deposit sweep service. Merrill Lynch offered this second service to its brokerage customers at least as early as 2000 under the name Cash Management Account 2.0 ("2000 CMA 2.0 Service"). Upon information and belief, details of the 2000 CMA 2.0 Service are highly material to several, if not all, of the claim limitations in the '286, '551, and '350 Patents.

149. Upon information and belief, the Island Plaintiffs, named inventors, or attorneys, agents, or representatives of the Island Plaintiffs who were associated with the filing and prosecution of the applications that led to the issuance of the '286, '551, and '350 Patents knowingly and intentionally withheld material information from the USPTO with regards to the 2000 CMA 2.0 Service, including but not limited to the iMoneyNet Article. The 2000 CMA 2.0 Service was on sale and/or in public use more than one year prior to the filing dates of the applications that resulted in the '286, '551, and '350 Patents and information about the 2000



CMA 2.0 Service was material to the patentability of one or more of the claims of the applications that resulted in the '286, '551, and '350 Patents. This constitutes inequitable conduct, which renders the '286, '551, and '350 Patents unenforceable.

E. Failure to Disclose And Material Misrepresentations Regarding the Merrill Lynch Banking Advantage Program

150. Upon information and belief, the Island Plaintiffs, named inventors, or attorneys, agents, or representatives of the Island Plaintiffs who were associated with the prosecution of the applications that matured into the '286, '551 and '350 Patents and other related applications, knowingly, and with the intent to deceive the USPTO, failed to disclose material information regarding the Merrill Lynch Banking Advantage Program.

151. Upon information and belief, at least as early as 2000, Merrill Lynch began offering another related program called the Merrill Lynch Banking Advantage Program ("MLBA Program"). Upon information and belief, details of the MLBA Program are highly material to several, if not all, of the claim limitations in the '286, '551, and '350 Patents.

152. Upon information and belief, the Island Plaintiffs, named inventors, or attorneys, agents, or representatives of the Island Plaintiffs who were associated with the filing and prosecution of the then-pending application that led to the issuance of the '551 Patent, disclosed two material references regarding the MLBA Program to the USPTO in an IDS on March 3, 2009. In disclosing the two material references, the Island Plaintiffs certified that "to the knowledge of the undersigned, after making reasonable inquiry, no item of information contained in the [IDS] was known to any individual designated in 37 C.F.R. § 1.56(c) more than three months prior to the filing of the [IDS]." Upon information and belief, Bruce Bent II, one of the named inventors of the '286, '551, and '350 Patents, was aware of the MLBA Program long before the filing of the IDS, as evidenced by his comments about the program in a November 1, 2000 article in the periodical, "On Wall Street." Upon information and belief, the Island

Plaintiffs, named inventors, or attorneys, agents, or representatives of the Island Plaintiffs were also aware of the MLBA Program more than three months before the filing of the March 3, 2009 IDS, as evidenced by the iMoneyNet Article. Upon information and belief, this material misrepresentation was made with an intent to deceive the USPTO and constitutes inequitable conduct which renders the '551 Patent unenforceable.

153. During the prosecution of the '551 Patent, the Island Plaintiffs were notified that the information contained in the March 3, 2009 IDS would not be considered by the USPTO because it was filed after the issue fee was paid. Despite this notice, the Island Plaintiffs failed to file a petition to withdraw the '551 Patent from issuing and failed to file a Request for Continued Examination ("RCE") to allow the USPTO to consider the two documents that disclosed material and non-cumulative information about the MLBA Program. Upon information and belief, this failure to disclose documents pertaining to the MLBA Program was a material omission made with an intent to deceive the USPTO which constitutes inequitable conduct.

154. Upon information and belief, the Island Plaintiffs, named inventors, or attorneys, agents, or representatives of the Island Plaintiffs who were associated with the filing and prosecution of the applications that led to the issuance of the '286, '551, and '350 Patents knowingly and intentionally withheld material information from the USPTO with regards to the MLBA Program, including but not limited to the iMoneyNet Article. The MLBA Program was on sale and/or in public use more than one year prior to the filing dates of the applications that resulted in the '286, '551, and '350 Patents and information about the MLBA Program was material to the patentability of one or more of the claims of the applications that resulted in the '286, '551, and '350 Patents. Upon information and belief, during the prosecution of the applications that led to the '286, '551, and '350 Patents, with the intent to deceive the USPTO, the Island Plaintiffs, named inventors, or attorneys, agents, or representatives of the Island Plaintiffs who were associated with the filing and prosecution of the applications that led to the issuance of the '286, '551, and '350 Patents were aware of material information regarding the

MLBA Program and failed to disclose such information. This constitutes inequitable conduct, which renders the '286, '551, and '350 Patents unenforceable.

F. Failure to Disclose Information Regarding Deposit Sweep Services

155. Upon information and belief, the Island Plaintiffs, named inventors, or attorneys, agents, or representatives of the Island Plaintiffs who were associated with the filing and prosecution of the applications that led to the issuance of the '231 Patent knowingly and intentionally withheld material information from the USPTO regarding deposit sweep services, including without limitation a letter from William W. Wiles (Secretary of the Federal Reserve) dated June 22, 1983, a letter from Michael Bradford (General Counsel for the Federal Reserve Board) dated November 16, 1984, letters from Oliver I. Ireland (Associate General Counsel of the Federal Reserve Board) dated June 22, 1988, February 7, 1995, August 1, 1995, August 30, 1995, and October 18, 1996. Each of these printed publications was material to the patentability of one or more of the claims of the application that resulted in the '231 Patent. Upon information and belief, during the prosecution of the applications that led to the '231 Patent, with the intent to deceive the USPTO, the Island Plaintiffs, named inventors, or attorneys, agents, or representatives of the Island Plaintiffs who were associated with the filing and prosecution of the applications that led to the issuance of the '231 Patent were aware of each of the printed publications and failed to disclose them. This constitutes inequitable conduct that would render the '231 Patent unenforceable. Under the doctrine of infectious unenforceability, this inequitable conduct during the prosecution of the '231 Patent renders unenforceable later-filed applications, including the applications that led to the '286, '551, and '350 Patents.

156. There exists an actual and justiciable controversy between TBS and the Island Plaintiffs as to whether the '286, '551 and '350 Patents are unenforceable. This controversy is of sufficient immediacy and reality to warrant the issuance of a declaratory judgment.

157. Pursuant to 28 U.S.C. §§ 2201 and 2202, TBS is entitled to a declaratory judgment that the '286, '551, and '350 Patents are unenforceable, and any other relief that the Court deems necessary or proper.

**PRAYER FOR RELIEF**

WHEREFORE, TBS prays for the following:

- a. A declaration that TBS does not infringe any valid claims of the '286, '551 and '350 Patents;
- b. A declaration that each and every claim of the '286, '551, and '350 Patents is invalid;
- c. A declaration that the '286, '551, and '350 Patents are each unenforceable;
- d. Dismissal of all of Island Plaintiffs' claims in their entirety with prejudice;
- e. A judgment that this is an "exceptional case" and an award of TBS's reasonable attorneys' fees, expenses, and costs in this action under 35 U.S.C. § 285; and
- f. An award of such other relief as the Court may deem appropriate and just under the circumstances.

**DEMAND FOR JURY TRIAL**

TBS demands a trial by jury of all issues set forth herein pursuant to Fed. R. Civ. P. 38.

Respectfully Submitted,

DATED: June 25, 2009

By: 

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*Counsel for Total Bank Solutions, LLC*

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

USDS SDNY  
DOCUMENT  
ELECTRONICALLY FILED  
DOC #:  
DATE FILED: 10-19-09

-----x  
ISLAND INTELLECTUAL PROPERTY LLC,  
LIDS CAPITAL LLC, DOUBLE ROCK  
CORPORATION, and INTRASWEEP LLC,

Plaintiffs,

v.

PROMONTORY INTERFINANCIAL  
NETWORK, LLC, MBSC SECURITIES  
CORPORATION, DEUTSCHE BANK AG,  
DEUTSCHE BANK TRUST COMPANY  
AMERICAS, and TOTAL BANK SOLUTIONS,  
LLC,

Defendants.  
-----x

Civil Action No.: 09 Civ. 2675 (VM)

**STIPULATED DISMISSAL OF  
COUNTS I-III OF DEFENDANT  
PROMONTORY INTERFINANCIAL  
NETWORK, LLC'S  
COUNTERCLAIM  
WITH PREJUDICE**

Whereas, on June 25, 2009, Promontory Interfinancial Network, LLC ("Promontory") asserted declaratory judgment counterclaims against Island Intellectual Property LLC ("Island IP"), Intrasweep LLC ("Intrasweep"), LIDs Capital LLC ("LIDs Capital") and Double Rock Corporation ("Double Rock") (collectively "the Island Parties") in the United States District Court for the Southern District of New York, Civil Action No. 09-cv-2675, seeking among other things, a declaratory judgment that U.S. Patent No. 6,374,231 ("the '231 patent") is not infringed, not valid and not enforceable (Counterclaim Counts I-III) (D.I. 27); and

Whereas, the Island Parties and Defendant Promontory have agreed to the attached Statement of Non-Liability/Covenant Not to Sue with respect to the '231 patent.

IT IS HEREBY STIPULATED AND AGREED THAT:

(1) Pursuant to Rule 41(a)(1)(A)(ii) of the Federal Rules of Civil Procedure, Promontory dismisses Counts I-III of its Counterclaim in the above action with prejudice; and,

(2) Promontory and the Island Parties will each bear their own fees and costs in this action with respect to Counts I-III of Promontory's Counterclaim against the Island Parties.

MAYER BROWN LLP

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*Counsel for Defendant Promontory  
Interfinancial Network, LLC*

AMSTER, ROTHSTEIN & EBENSTEIN LLP

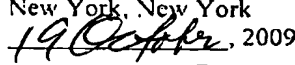
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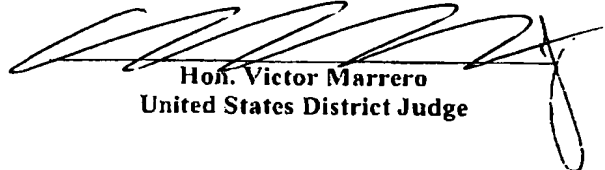
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*Counsel for Plaintiffs Island Intellectual  
Property LLC, LIDs Capital LLC, Double  
Rock Corporation and Intrasweep LLC*

**IT IS SO ORDERED.**

Dated: New York, New York  
 2009

  
Hon. Victor Marrero  
United States District Judge

Anthony F. Lo Cicero (AL 7538)  
Charles R. Macedo (CM 4980)  
Benjamin Charkow (BC 4455)  
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Attorneys for Plaintiffs  
Island Intellectual Property LLC  
LIDs Capital LLC, Double Rock Corporation,  
and Intrasweep LLC

**UNITED STATES DISTRICT COURT FOR THE  
SOUTHERN DISTRICT OF NEW YORK**

**ISLAND INTELLECTUAL PROPERTY LLC,  
LIDS CAPITAL LLC, DOUBLE ROCK  
CORPORATION, and INTRASWEEP LLC,**

**Plaintiffs,**

**v.**

**PROMONTORY INTERFINANCIAL  
NETWORK, LLC, MBSC SECURITIES  
CORPORATION, DEUTSCHE BANK AG,  
DEUTSCHE BANK TRUST COMPANY  
AMERICAS, and TOTAL BANK SOLUTIONS,  
LLC,**

**Defendants.**

**Civil Action No.: 09 Civ. 2675 (VM)**

**STATEMENT OF NON-LIABILITY / COVENANT NOT TO SUE**

WHEREAS, Island Intellectual Property LLC ("Island IP") is the owner of all rights,  
title and interest in U.S. Patent No. 6,374,231 ("the '231 patent");

WHEREAS, LIDs Capital LLC ("LIDs Capital") is the exclusive licensee of Island IP for  
the '231 patent for providing cash management services for broker dealers and asset managers,



and Double Rock Corporation ("Double Rock") is a sublicensee of LIDs Capital for the '231 patent with respect to providing cash management services for broker dealers and asset managers;

WHEREAS, Intrasweep LLC ("Intrasweep") is the exclusive licensee of Island IP for the '231 patent for providing cash management services for banks, and Double Rock is a sublicensee of Intrasweep for the '231 patent with respect to providing cash management services for banks;

WHEREAS, Island IP has filed reissue application Ser. No. 10/825,440 on April 14, 2004 to reissue the '231 patent, cancelling all of the claims of the '231 Patent as issued on April 16, 2002 (i.e., claims 1-19), and seeking new claims, which reissue application is currently pending;

WHEREAS, on March 24, 2009, Promontory Interfinancial Network, LLC ("Promontory") filed a declaratory judgment lawsuit against Island IP, LIDs Capital and Double Rock in the United States District Court for the Eastern District of Virginia ("the Virginia Court"), Civil Action No. 1:09-316, seeking, among other things, a declaratory judgment that the '231 patent is not valid, not infringed and not enforceable; and

WHEREAS, after the Virginia Court transferred that lawsuit, on June 1, 2009, Promontory reasserted claims for declaratory judgment against Island IP, LIDs Capital, Intrasweep and Double Rock (collectively "the Island Parties") in the United States District Court for the Southern District of New York, Civil Action No. 09-cv-2675, seeking among other things, a declaratory judgment that the '231 patent is not valid, not infringed and not enforceable.

In an effort to resolve this dispute, the Island Parties hereby affirm that Promontory or any successors-in-interest have no liability to the Island Parties or any successors-in-interest to the '231 patent for infringement of any and all claims issued on April 16, 2002 in the '231 patent

and the Island Parties and any successors-in-interest to the '231 patent will not sue Promontory or any successors-in-interest for infringement of any and all claims issued on April 16, 2002 of the '231 patent with regard to any Promontory product or Promontory service previously or currently in existence, or any future Promontory product or Promontory service including, but not limited to Promontory's IND and IND2 products or services.

The Island Parties further hereby affirm that no customer, broker-dealer or third party using a Promontory product or Promontory service or providing a Promontory product or Promontory service shall have any liability to the Island Parties or any successors-in-interest to the '231 patent for infringement of any and all claims issued on April 16, 2002 in the '231 patent with regard to any Promontory product or Promontory service previously or currently in existence, or future Promontory product or Promontory service including, but not limited to Promontory's IND and IND2 products or services.

The Island Parties further hereby affirm that the Island Parties and any successors-in-interest to the '231 patent will not sue any customer, broker-dealer or third party using a Promontory product or Promontory service or providing a Promontory product or Promontory service for infringement of any and all claims issued on April 16, 2002 of the '231 patent with regard to any Promontory product or Promontory service previously or currently in existence, or future Promontory product or Promontory service including, but not limited to Promontory's IND and IND2 products or services.

Notwithstanding the above, if new claims emerge from the currently pending reissue proceeding or any future reissue or reexamination proceedings that are not substantially identical to the claims of the '231 patent issued on April 16, 2002, and if there is an issue of infringement by Promontory and/or its customers of the non-substantially identical claims, the Island Parties

reserve the right to commence an action against Promontory and/or its customers on these non-substantially identical claims and Promontory and/or its customers would be free to raise a specified defense as allowed by law or equity.

This Statement of Non-Liability/Covenant Not to Sue supersedes and replaces the prior Statements of Non-Liability/Covenants Not to Sue submitted to the Virginia Court in Civil Action No. 1:09-316.

Dated: October 19, 2009


Respectfully submitted,

DOUBLE ROCK CORPORATION, ISLAND  
INTELLECTUAL PROPERTY LLC,  
INTRASWEEP LLC and LIDs CAPITAL LLC

By Counsel

AMSTER, ROTHSTEIN & EBENSTEIN LLP

By:



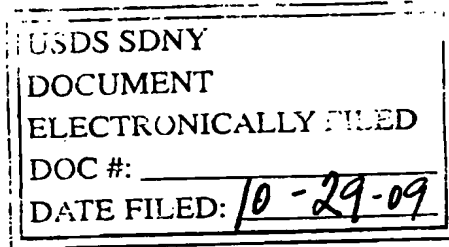
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Attorneys for Plaintiffs  
Island Intellectual Property LLC  
LIDs Capital LLC, Double Rock Corporation, and  
Intrasweep LLC



*MAILED 10/29/09*

**UNITED STATES DISTRICT COURT FOR THE  
SOUTHERN DISTRICT OF NEW YORK**

**ISLAND INTELLECTUAL PROPERTY LLC,  
LIDS CAPITAL LLC, DOUBLE ROCK  
CORPORATION, and INTRASWEEP LLC,**

**Plaintiffs,**

**v.**

**PROMONTORY INTERFINANCIAL  
NETWORK, LLC, MBSC SECURITIES  
CORPORATION, DEUTSCHE BANK AG,  
DEUTSCHE BANK TRUST COMPANY  
AMERICAS, and TOTAL BANK SOLUTIONS,  
LLC,**

**Defendants.**

**09-CV-2675 (VM) (AJP)**

**STIPULATION AND ORDER**

IT IS HEREBY STIPULATED AND AGREED by and between the undersigned counsel for Island Intellectual Property LLC, LIDS Capital LLC, Double Rock Corporation and Intrasweep LLC (collectively, the "Island Parties"), and counsel for Promontory Interfinancial Network, LLC and MBSC Securities Corporation (collectively, the "Promontory Defendants"), that all claims asserted by the Island Parties against the Promontory Defendants, and all counterclaims asserted by the Promontory Defendants against the Island Parties, are dismissed with prejudice.

The Island Parties and the Promontory Defendants will each bear their own fees and costs in this action with respect to the claims asserted by the Island Parties against the Promontory Defendants and the counterclaims asserted by the Promontory Defendants against the Island Parties.

The clerk is hereby directed that Promontory Interfinancial Network, LLC and MBSC Securities Corporation shall be removed from the case caption henceforth.

Dated: New York, New York  
October 28, 2009

MAYER BROWN LLP

AMSTER, ROTHSTEIN & EBENSTEIN LLP

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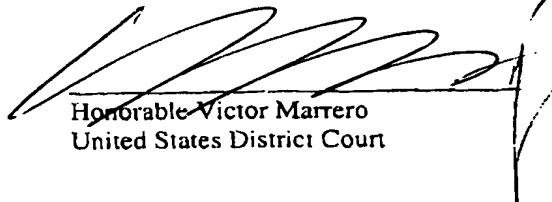
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*Counsel for Plaintiffs Island Intellectual  
Property LLC, LIDs Capital LLC, Double  
Rock Corporation and Intrasweep LLC*

SO ORDERED

*28 October 2009*

  
Honorable Victor Marrero  
United States District Court

Anthony F. Lo Cicero (AL 7538)  
Charles R. Macedo (CM 4980)  
Benjamin Charkow (BC 4455)  
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Attorneys for Plaintiffs  
Island Intellectual Property LLC  
LIDs Capital LLC, Double Rock Corporation,  
and Intrasweep LLC

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

----- x	
ISLAND INTELLECTUAL PROPERTY LLC,	:
LIDS CAPITAL LLC, DOUBLE ROCK	:
CORPORATION, and INTRASWEEP LLC,	:
	:
Plaintiffs,	:
	:
v.	:
	:
PROMONTORY INTERFINANCIAL	:
NETWORK, LLC, MBSC SECURITIES	:
CORPORATION, DEUTSCHE BANK AG,	:
DEUTSCHE BANK TRUST COMPANY	:
AMERICAS, and TOTAL BANK SOLUTIONS,	:
LLC,	:
	:
Defendants.	:
----- x	

Civil Action No.: 09 Civ. 2675 (VM)

**THE ISLAND PLAINTIFFS' REPLY  
TO DEFENDANT DEUTSCHE  
BANK TRUST COMPANY  
AMERICAS' COUNTERCLAIMS**

Plaintiffs/Counterclaim Defendants Island Intellectual Property LLC ("Island IP"), LIDs Capital LLC ("LIDs Capital"), Double Rock Corporation ("Double Rock"), and Intrasweep LLC ("Intrasweep") (collectively, "the Island Plaintiffs"), by their attorneys, Amster, Rothstein & Ebenstein LLP, reply to Defendant/Counterclaim Plaintiff Deutsche Bank Trust Company

Americas' (hereinafter "Deutsche U.S.") Counterclaims in accordance with Rule 8 of the Federal Rules of Civil Procedure.

**REPLY TO DEUTSCHE U.S.'S COUNTERCLAIMS**

**THE PARTIES**

1. The Island Plaintiffs admit the allegations of Paragraph 108 of Defendant Deutsche U.S.'s Counterclaims.

2. The Island Plaintiffs admit the allegations of Paragraph 109 of Defendant Deutsche U.S.'s Counterclaims.

3. The Island Plaintiffs admit the allegations of Paragraph 110 of Defendant Deutsche U.S.'s Counterclaims.

4. The Island Plaintiffs admit the allegations of Paragraph 111 of Defendant Deutsche U.S.'s Counterclaims.

5. The Island Plaintiffs admit the allegations of Paragraph 112 of Defendant Deutsche U.S.'s Counterclaims.

**JURISDICTION AND VENUE**

6. The Island Plaintiffs admit the allegations of Paragraph 113 of Defendant Deutsche U.S.'s Counterclaims.

7. The Island Plaintiffs admit the allegations of Paragraph 114 of Defendant Deutsche U.S.'s Counterclaims.

8. The Island Plaintiffs admit the allegations of Paragraph 115 of Defendant Deutsche U.S.'s Counterclaims.

9. The Island Plaintiffs admit the allegations of Paragraph 116 of Defendant Deutsche U.S.'s Counterclaims.

10. The Island Plaintiffs admit the allegations of Paragraph 117 of Defendant Deutsche U.S.'s Counterclaims.

11. The Island Plaintiffs admit the allegations of Paragraph 118 of Defendant Deutsche U.S.'s Counterclaims.

COUNT I

(Declaratory Judgment of Non-Infringement of U.S. Patent Nos. 7,509,286, 7,519,551, and 7,536,350)

12. With respect to the allegations of Paragraph 119 of Defendant Deutsche U.S.'s Counterclaims, the Island Plaintiffs incorporate herein their responses to Paragraphs 108 through 118 of Defendant Deutsche U.S.'s Counterclaims with the same force and effect as if set forth in full below.

13. The Island Plaintiffs admit the allegations of Paragraph 120 of Defendant Deutsche U.S.'s Counterclaims.

14. The Island Plaintiffs deny the allegations of Paragraph 121 of Defendant Deutsche U.S.'s Counterclaims.

15. The Island Plaintiffs admit the allegations of Paragraph 122 of Defendant Deutsche U.S.'s Counterclaims.

16. With respect to the allegations of Paragraph 123 of Defendant Deutsche U.S.'s Counterclaims, the Island Plaintiffs acknowledge that this is Deutsche U.S.'s position, but deny that this position is correct.

17. With respect to the allegations of Paragraph 124 of Defendant Deutsche U.S.'s Counterclaims, the Island Plaintiffs admit there is an actual and justiciable controversy between Defendant Deutsche U.S. and the Island Plaintiffs and that this controversy is of sufficient immediacy and reality to warrant a decision on the merits. The Island Plaintiffs deny the remaining allegations of Paragraph 124 of Defendant Deutsche U.S.'s Counterclaims.



18. The Island Plaintiffs deny the allegations of Paragraph 125 of Defendant Deutsche U.S.'s Counterclaims.

COUNT II

(Declaratory Judgment of Invalidity of U.S. Patent Nos. 7,509,286, 7,519,551, and 7,536,350)

19. With respect to the allegations of Paragraph 126 of Defendant Deutsche U.S.'s Counterclaims, the Island Plaintiffs incorporate herein their responses to Paragraphs 108 through 125 of Defendant Deutsche U.S.'s Counterclaims with the same force and effect as if set forth in full below.

20. The Island Plaintiffs deny the allegations of Paragraph 127 of Defendant Deutsche U.S.'s Counterclaims.

21. With respect to the allegations of Paragraph 128 of Defendant Deutsche U.S.'s Counterclaims, the Island Plaintiffs admit there is an actual and justiciable controversy between Deutsche U.S. and the Island Plaintiffs and that this controversy is of sufficient immediacy and reality to warrant a decision on the merits. The Island Plaintiffs deny the remaining allegations of Paragraph 128 of Defendant Deutsche U.S.'s Counterclaims.

22. The Island Plaintiffs deny the allegations of Paragraph 129 of Defendant Deutsche U.S.'s Counterclaims.

COUNT III

(Declaratory Judgment of Unenforceability of U.S. Patent Nos. 7,509,286, 7,519,551, and 7,536,350)

23. With respect to the allegations of Paragraph 130 of Defendant Deutsche U.S.'s Counterclaims, the Island Plaintiffs incorporate herein their responses to Paragraphs 108 through 129 of Defendant Deutsche U.S.'s Counterclaims with the same force and effect as if set forth in full below.

24. The Island Plaintiffs deny the allegations of Paragraph 131 of Defendant Deutsche U.S.'s Counterclaims.

25. The Island Plaintiffs deny the allegations of Paragraph 132 of Defendant Deutsche U.S.'s Counterclaims.

26. With respect to the allegations of Paragraph 133 of Defendant Deutsche U.S.'s Counterclaims, the Island Plaintiffs admit that U.S. Application Serial No. 10/411,650 ("the '650 Application"), filed on April 11, 2003, which claims priority from Provisional Application Ser. No. 60/372,347, filed on April 12, 2002, and which matured into the '286 Patent, is a continuation-in-part of U.S. Application Serial No. 10/382,946 ("the '946 Application"), filed on March 6, 2003. The '946 Application claims priority from Provisional Application Ser. No. 60/442,849, filed on January 27, 2003, and which matured into the '350 Patent. The '650 Application and the '946 Application are continuations-in-part of U.S. Application Ser. No. 10/071,053 ("the '053 Application"), filed on February 8, 2002, and which matured into the '551 Patent. The '650, '946 and '053 Applications are all continuations-in-part of U.S. Application Ser. No. 09/677,535 ("the '535 Application"), filed on October 2, 2000. The '535 Application and the '053 Application are continuations-in-part of U.S. Application Ser. No. 09/176,340, filed on October 21, 1998, which matured into U.S. Patent No. 6,374,231 ("the '231 Patent"). The Island Plaintiffs admit that the '286, '551 and '350 Patents are related by priority to the '535 Application and '231 Patent. With respect to the remainder of the allegations of Paragraph 133 of Defendant Deutsche U.S.'s Counterclaims, the Island Plaintiffs deny these allegations.

27. With respect to the allegations of Paragraph 134 of Defendant Deutsche U.S.'s Counterclaims, the Island Plaintiffs admit that Double Rock was formerly known as the Reserve Management Corporation. With respect to the remainder of the allegations of Paragraph 134 of Defendant Deutsche U.S.'s Counterclaims, the Island Plaintiffs deny these allegations.

28. With respect to the allegations of Paragraph 135 of Defendant Deutsche U.S.'s Counterclaims, the Island Plaintiffs admit that Double Rock's counsel filed a trademark application (Ser. No. 76/315,660) with the USPTO for the mark RESERVE INSURED DEPOSITS and state that the prosecution history associated with that filing speaks for itself.

29. With respect to the allegations of Paragraph 136 of Defendant Deutsche U.S.'s Counterclaims, the Island Plaintiffs admit that it filed patent applications that matured into the '286, '551 and '350 Patents, as well as the '231 Patent, and that the corresponding prosecution histories associated with these patent applications speak for themselves.

30. With respect to the allegations of Paragraph 137 of Defendant Deutsche U.S.'s Counterclaims, the Island Plaintiffs admit that Bruce Bent II executed a February 27, 2007 declaration and that the declaration and its accompanying attachment speak for themselves.

31. With respect to the allegations of Paragraph 138 of Defendant Deutsche U.S.'s Counterclaims, the Island Plaintiffs state that the 2004 report entitled "Brokerage Cash Sweep Options: The Shift from Money Funds to FDIC-Insured Bank Deposit Accounts" published by iMoneyNet speaks for itself. With respect to the remainder of the allegations of Paragraph 138 of Defendant Deutsche U.S.'s Counterclaims, the Island Plaintiffs deny these allegations.

32. The Island Plaintiffs deny the allegations of Paragraph 139 of Defendant Deutsche U.S.'s Counterclaims.

33. The Island Plaintiffs deny the allegations of Paragraph 140 of Defendant Deutsche U.S.'s Counterclaims.

34. With respect to the allegations of Paragraph 141 of Defendant Deutsche U.S.'s Counterclaims, the Island Plaintiffs admit that the '650 Application matured into the '286 Patent and that the prosecution history of the '286 Patent speak for itself. With respect to the remainder

of the allegations of Paragraph 141 of Defendant Deutsche U.S.'s Counterclaims, the Island Plaintiffs deny these allegations.

35. With respect to the allegations of Paragraph 142 of Defendant Deutsche U.S.'s Counterclaims, the Island Plaintiffs admit that the '053 Application matured into the '551 Patent and that the prosecution history of the '551 Patent speak for itself. With respect to the remainder of the allegations of Paragraph 142 of Defendant Deutsche U.S.'s Counterclaims, the Island Plaintiffs deny these allegations.

36. With respect to the allegations of Paragraph 143 of Defendant Deutsche U.S.'s Counterclaims, the Island Plaintiffs admit that the '946 Application matured into the '350 Patent and that the prosecution history of the '350 Patent speak for itself. With respect to the remainder of the allegations of Paragraph 143 of Defendant Deutsche U.S.'s Counterclaims, the Island Plaintiffs deny these allegations.

37. The Island Plaintiffs deny the allegations of Paragraph 144 of Defendant Deutsche U.S.'s Counterclaims.

38. With respect to the allegations of Paragraph 145 of Defendant Deutsche U.S.'s Counterclaims, the Island Plaintiffs admit that Merrill Lynch has developed various cash management products, the details of which were submitted to the USPTO for evaluation during the '286 Patent prosecution in numerous Information Disclosure Statements ("IDS") and that the references associated with those submissions speak for themselves. Similar submissions were made during the prosecution of the '551 and '350 Patents. The Island Plaintiffs lack knowledge or information sufficient to form a belief as to the truth of the remainder of the allegations of Paragraph 145 of Defendant Deutsche U.S.'s Counterclaims, and accordingly, deny them.

39. The Island Plaintiffs deny the allegations of Paragraph 146 of Defendant Deutsche U.S.'s Counterclaims.

40. The Island Plaintiffs deny the allegations of Paragraph 147 of Defendant Deutsche U.S.'s Counterclaims.

41. With respect to the allegations of Paragraph 148 of Defendant Deutsche U.S.'s Counterclaims, the Island Plaintiffs admit that Merrill Lynch has developed various cash management products, the details of which were submitted to the USPTO for evaluation during the '286 Patent prosecution in numerous IDS's and that the references associated with those submissions speak for themselves. Similar submissions were made during the prosecution of the '551 and '350 Patents. The Island Plaintiffs lack knowledge or information sufficient to form a belief as to the truth of the remainder of the allegations of Paragraph 148 of Defendant Deutsche U.S.'s Counterclaims, and accordingly, denies them.

42. The Island Plaintiffs deny the allegations of Paragraph 149 of Defendant Deutsche U.S.'s Counterclaims.

43. The Island Plaintiffs deny the allegations of Paragraph 150 of Defendant Deutsche U.S.'s Counterclaims.

44. With respect to the allegations of Paragraph 151 of Defendant Deutsche U.S.'s Counterclaims, the Island Plaintiffs admit that Merrill Lynch has developed various cash management products, the details of which were submitted to the USPTO for evaluation during the '286 Patent prosecution in numerous IDS's and that the references associated with those submissions speak for themselves. Similar submissions were made during the prosecution of the '551 and '350 Patents. With respect to the remainder of the allegations of Paragraph 151 of Defendant Deutsche U.S.'s Counterclaims, the Island Plaintiffs deny these allegations.

45. With respect to the allegations of Paragraph 152 of Defendant Deutsche U.S.'s Counterclaims, the Island Plaintiffs admit the Island Plaintiffs, named inventors, or attorneys, agents, or representatives of the Island Plaintiffs who were associated with the filing and

prosecution of the then-pending application that led to the issuance of the '551 Patent, submitted an IDS on March 3, 2009, to the USPTO and that the IDS speaks for itself. With respect to the remainder of the allegations of Paragraph 152 of Defendant Deutsche U.S.'s Counterclaims, the Island Plaintiffs deny these allegations.

46. With respect to the allegations of Paragraph 153 of Defendant Deutsche U.S.'s Counterclaims, the Island Plaintiffs state that the prosecution history of the '551 Patent speak for itself. With respect to the remainder of the allegations of Paragraph 153 of Defendant Deutsche U.S.'s Counterclaims, the Island Plaintiffs deny these allegations.

47. The Island Plaintiffs deny the allegations of Paragraph 154 of Defendant Deutsche U.S.'s Counterclaims.

48. The Island Plaintiffs deny the allegations of Paragraph 155 of Defendant Deutsche U.S.'s Counterclaims.

49. With respect to the allegations of Paragraph 156 of Defendant Deutsche U.S.'s Counterclaims, the Island Plaintiffs admit there is an actual and justiciable controversy between Deutsche U.S. and the Island Plaintiffs and that this controversy is of sufficient immediacy and reality to warrant a decision on the merits. The Island Plaintiffs deny the remaining allegations of Paragraph 156 of Defendant Deutsche U.S.'s Counterclaims.

50. The Island Plaintiffs deny the allegations of Paragraph 157 of Defendant Deutsche U.S.'s Counterclaims.

**PRAYER FOR RELIEF**

51. The Island Plaintiffs deny that Defendant Deutsche U.S. is entitled to any relief sought in its prayer for relief.

**AFFIRMATIVE DEFENSES**

**First Affirmative Defense**

52. Defendant Deutsche U.S.'s Counterclaims fail to state a claim on which relief can be granted.

**Second Affirmative Defense**

53. Count III of Defendant Deutsche U.S.'s Counterclaims fails to identify material prior art which was withheld during the prosecution of any patent owned by Island IP.

**Third Affirmative Defense**

54. The Island Plaintiffs had no intent to deceive the USPTO and Count III of Defendant Deutsche U.S.'s Counterclaims fails to establish an intent to deceive during the prosecution of the '231, '286, '551 or '350 Patents.

**Fourth Affirmative Defense**

55. During the procurement of the '231, '286, '551 and '350 Patents, the applicants and their representatives at all times complied with their duty of candor and good faith.

**Fifth Affirmative Defense**

56. Defendant Deutsche U.S.'s Counterclaim regarding inequitable conduct (Count III) is not pled with particularity pursuant to Rule 9(b) of the Federal Rules of Civil Procedure.

**Sixth Affirmative Defense**

57. Defendant Deutsche U.S.'s Counterclaims are barred from equitable relief by the doctrine of unclean hands.

**Seventh Affirmative Defense**

58. The '286, '551 and '350 Patents are not invalid.

**Eighth Affirmative Defense**

59. Defendant Deutsche U.S. has, and is, infringing directly and/or indirectly at least Claim 1 of the '286 Patent, at least Claim 1 of the '551 Patent and at least Claim 12 of the '350 Patent.

Ninth Affirmative Defense

60. The Island Plaintiffs reserve the right to assert additional defenses as may be appropriate upon completion of its investigation and discovery.

PRAYER FOR RELIEF

WHEREFORE, the Island Plaintiffs request for judgment against Defendant Deutsche U.S. is as follows:

I. WITH RESPECT TO THE '286 PATENT

A. The Defendant Deutsche U.S. be held liable for infringement of at least Claim 1 of the '286 Patent.

B. That a permanent injunction issue against Defendant Deutsche U.S., its officers, agents, servants, employees, attorneys, parent and subsidiary corporations, assigns and successors in interest, and those persons in active concert or participation with Defendant Deutsche U.S., enjoining it from continued acts of infringement of the '286 Patent.

C. That the Court Order Defendant Deutsche U.S. to pay to Plaintiffs Island IP, LIDs Capital and Double Rock damages adequate to compensate Plaintiffs Island IP, LIDs Capital and Double Rock for the act of infringement of Defendant Deutsche U.S. together with interest and costs, pursuant to 35 U.S.C. § 284.

D. That the Court award such other and further relief as the Court deems just and proper.

II. WITH RESPECT TO THE '551 PATENT

A. That Defendant Deutsche U.S. be held liable for infringement of at least Claim 1 of the '551 Patent.

B. That a permanent injunction issue against Defendant Deutsche U.S., its officers, agents, servants, employees, attorneys, parent and subsidiary corporations, assigns and



successors in interest, and those persons in active concert or participation with Defendant Deutsche U.S., enjoining it from continued acts of infringement of the '551 Patent.

C. That the Court Order Defendant Deutsche U.S. to pay to the Island Plaintiffs damages adequate to compensate the Island Plaintiffs for the acts of infringement of Defendant Deutsche U.S. together with interest and costs, pursuant to 35 U.S.C. § 284.

D. That the Court award such other and further relief as the Court deems just and proper.

III. WITH RESPECT TO THE '350 PATENT

A. That Defendant Deutsche U.S. be held liable for infringement of at least Claim 12 of the '350 Patent.

B. That a permanent injunction issue against the Defendant Deutsche U.S., its officers, agents, servants, employees, attorneys, parent and subsidiary corporations, assigns and successors in interest, and those persons in active concert or participation with Defendant Deutsche U.S., enjoining it from continued acts of infringement of the '350 Patent.

C. That the Court Order Defendant Deutsche U.S. to pay to Plaintiffs Island IP, Intrasweep and Double Rock damages adequate to compensate the Plaintiffs Island IP, Intrasweep and Double Rock for the acts of infringement of Defendant Deutsche U.S. together with interest and costs, pursuant to 35 U.S.C. § 284.

D. That the Court award such other and further relief as the Court deems just and proper.

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Respectfully submitted,

AMSTER, ROTHSTEIN & EBENSTEIN LLP

Dated: New York, New York  
July 9, 2009

By: /s/ Charles R. Macedo  
Charles R. Macedo (CM 4980)

Of Counsel:

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Attorneys for Plaintiffs  
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LIDs Capital LLC, Double Rock Corporation,  
and Intrasweep LLC

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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ISLAND INTELLECTUAL PROPERTY LLC,	:	
LIDS CAPITAL LLC, DOUBLE ROCK	:	Civil Action No.: 09 Civ. 2675 (VM)
CORPORATION, and INTRASWEEP LLC,	:	
	:	
Plaintiffs,	:	<b>THE ISLAND PLAINTIFFS' REPLY</b>
	:	<b>TO DEFENDANT MBSC</b>
v.	:	<b>SECURITIES CORPORATION'S</b>
	:	<b>COUNTERCLAIMS</b>
PROMONTORY INTERFINANCIAL	:	
NETWORK, LLC, MBSC SECURITIES	:	
CORPORATION, DEUTSCHE BANK AG,	:	
DEUTSCHE BANK TRUST COMPANY	:	
AMERICAS, and TOTAL BANK SOLUTIONS,	:	
LLC,	:	
	:	
Defendants.	:	
----- x		

Plaintiffs/Counterclaim Defendants Island Intellectual Property LLC ("Island IP"), LIDs Capital LLC ("LIDs Capital"), Double Rock Corporation ("Double Rock"), and Intrasweep LLC ("Intrasweep") (collectively, "the Island Plaintiffs"), by their attorneys, Amster, Rothstein & Ebenstein LLP reply to Defendant/Counterclaim Plaintiff MBSC Securities Corporation's (hereinafter "MBSC") in accordance with Rule 8 of the Federal Rules of Civil Procedure.

THE PARTIES

1. With respect to the allegations of Paragraph 88 of Defendant MBSC's Counterclaims, the Island Plaintiffs admit that MBSC is a corporation organized and existing under the laws of the State of New York, with a place of business at 200 Park Avenue, New York, NY 10166, within this district. The Island Plaintiffs lack knowledge or information sufficient to form a basis as to the truth of the remainder of the allegations of Paragraph 88 of Defendant MBSC's Counterclaims, and accordingly, deny them.

2. The Island Plaintiffs admit the allegations of Paragraph 89 of Defendant MBSC's Counterclaims.

3. With respect to the allegations of Paragraph 90 of Defendant MBSC's Counterclaims, the Island Plaintiffs admit that Island IP, a wholly-owned subsidiary of Double Rock, is a Delaware limited liability company with its principal place of business at 1250 Broadway, New York, New York 10001. The Island Plaintiffs admit that Double Rock assigned all rights to the '231, '551 and '286 Patents, among other patent applications, to Island IP on December 1, 2008. The Island Plaintiffs admit that Island IP and Double Rock have acted through the same agents and have been represented by the same counsel.

4. With respect to the allegations of Paragraph 91 of Defendant MBSC's Counterclaims, the Island Plaintiffs admit that LIDs Capital, a wholly-owned subsidiary of Double Rock, is a Delaware limited liability company with its principal place of business at 1250 Broadway, New York, New York 10001. The Island Plaintiffs admit that LIDs Capital is the exclusive licensee of Island IP for the '231, '286 and '551 Patents, among other patent applications, with respect to providing cash management services for broker dealers and asset managers. The Island Plaintiffs admit that LIDs Capital and Double Rock have acted through the same agents and have been represented by the same counsel.

5. The Island Plaintiffs admit the allegations of Paragraph 92 of Defendant MBSC's Counterclaims.

JURISDICTION AND VENUE

6. The Island Plaintiffs admit the allegations of Paragraph 93 of Defendant MBSC's Counterclaims.

7. With respect to the allegations of Paragraph 94 of Defendant MBSC's Counterclaims, the Island Plaintiffs admit that venue is appropriate in this Court.

8. With respect to the allegations of Paragraph 95 of Defendant MBSC's Counterclaims, the Island Plaintiffs admit that this Court has personal jurisdiction over the Island Plaintiffs. With respect to the remainder of the allegations of Paragraph 95 of Defendant MBSC's Counterclaims, the Island Plaintiffs deny these allegations.

COUNT I

Declaratory Judgment of Non-Infringement of the '286 Patent

9. With respect to the allegations of Paragraph 96 of Defendant MBSC's Counterclaims, the Island Plaintiffs incorporate herein their responses to Paragraphs 88 through 95 of Defendant MBSC's Counterclaims with the same force and effect as if set forth in full below.

10. The Island Plaintiffs deny the allegations of Paragraph 97 of Defendant MBSC's Counterclaims.

11. With respect to the allegations of Paragraph 98 of Defendant MBSC's Counterclaims, the Island Plaintiffs admit there is an actual and justiciable controversy between Defendant MBSC and the Island Plaintiffs and that this controversy is of sufficient immediacy and reality to warrant a decision on the merits. With respect to the remainder of the allegations

of Paragraph 98 of Defendant MBSC's Counterclaims, the Island Plaintiffs deny these allegations.

12. The Island Plaintiffs deny the allegations of Paragraph 99 of Defendant MBSC's Counterclaims.

13. The Island Plaintiffs deny the allegations of Paragraph 100 of Defendant MBSC's Counterclaims.

## COUNT II

### Declaratory Judgment of Invalidity of the '286 Patent

14. With respect to the allegations of Paragraph 101 of Defendant MBSC's Counterclaims, the Island Plaintiffs incorporate herein their responses to Paragraphs 88 through 100 of Defendant MBSC's Counterclaims with the same force and effect as if set forth in full below.

15. The Island Plaintiffs deny the allegations of Paragraph 102 of Defendant MBSC's Counterclaims.

16. With respect to the allegations of Paragraph 103 of Defendant MBSC's Counterclaims, the Island Plaintiffs admit there is an actual and justiciable controversy between Defendant MBSC and the Island Plaintiffs and that this controversy is of sufficient immediacy and reality to warrant a decision on the merits. With respect to the remainder of the allegations of Paragraph 103 of Defendant MBSC's Counterclaims, the Island Plaintiffs deny these allegations.

17. The Island Plaintiffs deny the allegations of Paragraph 104 of Defendant MBSC's Counterclaims.

18. The Island Plaintiffs deny the allegations of Paragraph 105 of Defendant MBSC's Counterclaims.

COUNT III

Declaratory Judgment of Unenforceability of the '286 Patent

19. With respect to the allegations of Paragraph 106 of Defendant MBSC's Counterclaims, the Island Plaintiffs incorporate herein their responses to Paragraphs 88 through 105 of Defendant MBSC's Counterclaims with the same force and effect as if set forth in full below.

20. The Island Plaintiffs deny the allegations of Paragraph 107 of Defendant MBSC's Counterclaims.

21. The Island Plaintiffs deny the allegations of Paragraph 108 of Defendant MBSC's Counterclaims.

22. With respect to the allegations of Paragraph 109 of Defendant MBSC's Counterclaims, the Island Plaintiffs admit there is an actual and justiciable controversy between Defendant MBSC and the Island Plaintiffs and that this controversy is of sufficient immediacy and reality to warrant a decision on the merits. With respect to the remainder of the allegations of Paragraph 109 of Defendant MBSC's Counterclaims, the Island Plaintiffs deny these allegations.

23. The Island Plaintiffs deny the allegations of Paragraph 110 of Defendant MBSC's Counterclaims.

24. The Island Plaintiffs deny the allegations of Paragraph 111 of Defendant MBSC's Counterclaims.

DEMAND FOR JUDGMENT

25. The Island Plaintiffs deny that Defendant MBSC is entitled to any relief sought in its demand for judgment.

**AFFIRMATIVE DEFENSES**

**First Affirmative Defense**

26. Counts I-III of Defendant MBSC's Counterclaims fail to state a claim on which relief can be granted.

**Second Affirmative Defense**

27. Count III of Defendant MBSC's Counterclaims fails to identify material prior art which was withheld during the prosecution of any patent owned by Island IP.

**Third Affirmative Defense**

28. The Island Plaintiffs had no intent to deceive the USPTO and Count III of Defendant MBSC's Counterclaims fails to establish an intent deceive during the prosecution of the '231, '286, '551 or '350 Patents.

**Fourth Affirmative Defense**

29. During the procurement of the '231, '286, '551 and '350 Patents, the applicants and their representatives at all times complied with their duty of candor and good faith.

**Fifth Affirmative Defense**

30. Count III of Defendant MBSC's Counterclaim, regarding inequitable conduct, is not pled with particularity pursuant to Rule 9(b) of the Federal Rules of Civil Procedure.

**Sixth Affirmative Defense**

31. Defendant MBSC's Counterclaims for equitable relief are barred by the doctrine of unclean hands.

**Seventh Affirmative Defense**

32. Defendant MBSC has, and is, infringing directly and/or indirectly at least Claim 1 of the '286 Patent.

**Eighth Affirmative Defense**

33. The '286 Patent is not invalid.



Ninth Affirmative Defense

34. The Island Plaintiffs reserve the right to assert additional defenses as may be appropriate upon completion of its investigation and discovery.

PRAYER FOR RELIEF

WHEREFORE, the Island Plaintiffs request for judgment against Defendant MBSC is as follows:

I. WITH RESPECT TO THE '286 PATENT

A. The Defendant MBSC be held liable for infringement of at least Claim 1 of the '286 Patent.

B. That a permanent injunction issue against Defendant MBSC, its officers, agents, servants, employees, attorneys, parent and subsidiary corporations, assigns and successors in interest, and those persons in active concert or participation with Defendant MBSC, enjoining it from continued acts of infringement of the '286 Patent.

C. That the Court Order Defendant MBSC to pay to Plaintiffs Island IP, LIDs Capital and Double Rock damages adequate to compensate Plaintiffs Island IP, LIDs Capital and Double Rock for the act of infringement of Defendant MBSC together with interest and costs, pursuant to 35 U.S.C. § 284.

D. That the Court award such other and further relief as the Court deems just and proper.

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Respectfully submitted,

AMSTER, ROTHSTEIN & EBENSTEIN LLP

Dated: New York, New York  
July 9, 2009

By: /s/ Charles R. Macedo  
Charles R. Macedo (CM 4980)

Of Counsel:

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LIDs Capital LLC, Double Rock Corporation,  
and Intrasweep LLC

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

----- x	
ISLAND INTELLECTUAL PROPERTY LLC,	:
LIDS CAPITAL LLC, DOUBLE ROCK	:
CORPORATION, and INTRASWEEP LLC,	:
	:
Plaintiffs,	:
	:
v.	:
	:
PROMONTORY INTERFINANCIAL	:
NETWORK, LLC, MBSC SECURITIES	:
CORPORATION, DEUTSCHE BANK AG,	:
DEUTSCHE BANK TRUST COMPANY	:
AMERICAS, and TOTAL BANK SOLUTIONS,	:
LLC,	:
	:
Defendants.	:
----- x	

Civil Action No.: 09 Civ. 2675 (VM)

**THE ISLAND PLAINTIFFS' REPLY  
TO DEFENDANT PROMONTORY  
INTERFINANCIAL NETWORK  
LLC'S COUNTERCLAIMS**

Plaintiffs/Counterclaim Defendants Island Intellectual Property LLC ("Island IP"), LIDs Capital LLC ("LIDs Capital"), Double Rock Corporation ("Double Rock"), and Intrasweep LLC ("Intrasweep") (collectively, "the Island Plaintiffs"), by their attorneys, Amster, Rothstein & Ebenstein LLP reply to Defendant/Counterclaim Plaintiff Promontory Interfinancial Network,

LLC's (hereinafter "Promontory") Counterclaims in accordance with Rule 8 of the Federal Rules of Civil Procedure.

1. With respect to the allegations of Paragraph 90 of Defendant Promontory's Counterclaims, the Island Plaintiffs admit that Defendant Promontory and Plaintiff Double Rock compete in the market for providing "deposit sweep services" to broker-dealers. With respect to the remainder of the allegations of Paragraph 90 of Defendant Promontory's Counterclaims, the Island Plaintiffs deny these allegations.

2. With respect to the allegations of Paragraph 91 of Defendant Promontory's Counterclaims, the Island Plaintiffs admit that the three patent applications which matured into United States Patents No. 6,374,231 ("the '231 Patent"); 7,509,286 ("the '286 Patent"); and 7,519,551 ("the '551 Patent") have been assigned by Double Rock to Island IP, a wholly-owned subsidiary of Double Rock. With respect to the remainder of the allegations of Paragraph 91 of Defendant Promontory's Counterclaims, the Island Plaintiffs deny these allegations.

3. The Island Plaintiffs deny the allegations of Paragraph 92 of Defendant Promontory's Counterclaims.

4. With respect to the allegations of Paragraph 93 of Defendant Promontory's Counterclaims, the Island Plaintiffs admit that counsel for Promontory and counsel for the Island Plaintiffs have been corresponding since 2006 and that the letters associated with that correspondence speak for themselves. With respect to the remainder of the allegations of Paragraph 93 of Defendant Promontory's Counterclaims, the Island Plaintiffs deny these allegations.

5. With respect to the allegations of Paragraph 94 of Defendant Promontory's Counterclaims, the Island Plaintiffs admit that there is an actual and justiciable controversy between Defendant Promontory and the Island Plaintiffs with regard to Counts IV-XII of

Defendant Promontory's Counterclaims. The Island Plaintiffs deny there is an actual and justiciable controversy between Defendant Promontory and the Island Plaintiffs with regard to Counts I-III of Defendant Promontory's Counterclaims. With respect to the remainder of the allegations of Paragraph 94 of Defendant Promontory's Counterclaims, the Island Plaintiffs deny these allegations.

#### JURISDICTION AND VENUE

6. With respect to the allegations of Paragraph 95 of Defendant Promontory's Counterclaims, the Island Plaintiffs admit this Court has subject matter jurisdiction over Counts IV-XII of Promontory's declaratory judgment Counterclaims. The Island Plaintiffs deny this Court has subject matter jurisdiction over Counts I-III of Promontory's declaratory judgment Counterclaims.

7. With respect to the allegations of Paragraph 96 of Defendant Promontory's Counterclaims, the Island Plaintiffs admit that venue is appropriate in this Court.

8. With respect to the allegations of Paragraph 97 of Defendant Promontory's Counterclaims, the Island Plaintiffs admit this Court has jurisdiction over the Island Plaintiffs. With respect to the remainder of the allegations of Paragraph 97 of Defendant Promontory's Counterclaims, the Island Plaintiffs deny these allegations.

#### THE PARTIES

9. With respect to the allegations of Paragraph 98 of Defendant Promontory's Counterclaims, the Island Plaintiffs admit that Defendant Promontory is a Delaware limited liability company with its principal place of business at 1515 N. Courthouse Road, Arlington, Virginia, 22201. The Island Plaintiffs lack knowledge or information sufficient to form a basis as to the truth of the remainder of the allegations of Paragraph 98 of Defendant Promontory's Counterclaims, and accordingly, deny them.

10. With respect to the allegations of Paragraph 99 of Defendant Promontory's Counterclaims, the Island Plaintiffs admit that Double Rock is a New Jersey Corporation with its principal place of business at 1250 Broadway, New York, New York 10001. The Island Plaintiffs admit that Defendant Promontory competes directly with the broker-dealer insured deposit products offered by LIDs Capital and Double Rock as a sublicensee of LIDs Capital. The Island Plaintiffs admit that LIDs Capital is the exclusive licensee of Island IP for the '551 Patent with respect to providing cash management services for broker dealers and asset managers and that Double Rock is a sublicensee in that field of use.

11. With respect to the allegations of Paragraph 100 of Defendant Promontory's Counterclaims, the Island Plaintiffs admit that Island IP, a wholly-owned subsidiary of Double Rock, is a Delaware limited liability company with its principal place of business at 1250 Broadway, New York, New York 10001. The Island Plaintiffs admit that Double Rock assigned all rights to the '231 Patent and the applications which matured into the '551 and '286 Patents, among other patent applications, to Island IP in December 2008. The Island Plaintiffs admit that Island IP and Double Rock have acted through the same agents and have been represented by the same counsel.

12. With respect to the allegations of Paragraph 101 of Defendant Promontory's Counterclaims, the Island Plaintiffs admit that LIDs Capital, a wholly-owned subsidiary of Double Rock, is a Delaware limited liability company with its principal place of business at 1250 Broadway, New York, New York 10001. The Island Plaintiffs admit that LIDs Capital is the exclusive licensee of Island IP for the '231 Patent and the applications which matured into the '286 and '551 Patents, among other patent applications, with respect to providing cash management services for broker dealers and asset managers. The Island Plaintiffs admit that

LIDs Capital and Double Rock have acted through the same agents and have been represented by the same counsel.

13. With respect to the allegations of Paragraph 102 of Defendant Promontory's Counterclaims, the Island Plaintiffs admit that Intrasweep, a wholly-owned subsidiary of Double Rock, is a Delaware limited liability company with its principal place of business at 1250 Broadway, New York, New York 10001. The Island Plaintiffs admit that Intrasweep is the exclusive licensee of Island IP for the '551 Patent with respect to providing cash management services for banks in connection with money market deposit accounts and demand deposit accounts that facilitate the transfer of funds between money market deposit accounts and demand deposit accounts. The Island Plaintiffs admit that Intrasweep and Double Rock have acted through the same agents and have been represented by the same counsel.

#### FACTUAL BACKGROUND

##### Deposit Sweep Services

14. The Island Plaintiffs admit the allegations of Paragraph 103 of Defendant Promontory's Counterclaims.

15. The Island Plaintiffs admit the allegations of Paragraph 104 of Defendant Promontory's Counterclaims.

16. The Island Plaintiffs admit the allegations of Paragraph 105 of Defendant Promontory's Counterclaims.

17. The Island Plaintiffs admit the allegations of Paragraph 106 of Defendant Promontory's Counterclaims.

18. The Island Plaintiffs admit the allegations of Paragraph 107 of Defendant Promontory's Counterclaims.

19. The Island Plaintiffs admit the allegations of Paragraph 108 of Defendant Promontory's Counterclaims.

20. The Island Plaintiffs admit the allegations of Paragraph 109 of Defendant Promontory's Counterclaims.

21. The Island Plaintiffs admit the allegations of Paragraph 110 of Defendant Promontory's Counterclaims.

22. The Island Plaintiffs admit the allegations of Paragraph 111 of Defendant Promontory's Counterclaims.

23. With respect to the allegations of Paragraph 112 of Defendant Promontory's Counterclaims, the Island Plaintiffs admit that Merrill Lynch has developed various cash management products, the details of which were submitted to the United States Patent and Trademark Office ("USPTO") for evaluation during the '286 Patent prosecution in numerous Information Disclosure Statements ("IDS") and that the references associated with those submissions speak for themselves. Similar submissions were made during the prosecution of the '551 and '350 Patents and the '231 Patent and/or the '231 Patent Reissue proceeding, U.S. Application Ser. No. 10/825,440 and other patent applications owned by the Island Plaintiffs. The Island Plaintiffs lack knowledge or information sufficient to form a belief as to the truth of the remainder of the allegations of Paragraph 112 of Defendant Promontory's Counterclaims, and accordingly, deny them.

24. With respect to the allegations of Paragraph 113 of Defendant Promontory's Counterclaims, the Island Plaintiffs lack knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 113 of Defendant Promontory's Counterclaims, and accordingly, deny them.



25. With respect to the allegations of Paragraph 114 of Defendant Promontory's Counterclaims, the Island Plaintiffs lack knowledge or information sufficient to form a belief as to the truth of the remainder of the allegations of Paragraph 114 of Defendant Promontory's Counterclaims, and accordingly, deny them.

Regulatory Background

26. With respect to the allegations of Paragraph 115 of Defendant Promontory's Counterclaims, the Island Plaintiffs state that the relevant banking statutes and regulations, as well as guidance from relevant federal agencies, speak for themselves.

27. With respect to the allegations of Paragraph 116 of Defendant Promontory's Counterclaims, the Island Plaintiffs state that Regulation D speaks for itself.

28. With respect to the allegations of Paragraph 117 of Defendant Promontory's Counterclaims, the Island Plaintiffs state that Regulation D speaks for itself.

29. With respect to the allegations of Paragraph 118 of Defendant Promontory's Counterclaims, the Island Plaintiffs state that the June 22, 1983 Federal Reserve Board Letter and the June 22, 1988 Federal Reserve Board Letter speak for themselves. With respect to the remainder of the allegations of Paragraph 118 of Defendant Promontory's Counterclaims, the Island Plaintiffs deny these allegations.

30. With respect to the allegations of Paragraph 119 of Defendant Promontory's Counterclaims, the Island Plaintiffs admit that Defendant Promontory sells a product designated as the "Insured Network Deposits" or "IND" service to broker dealers (collectively referred to as "IND") and the Island Plaintiffs admit that Defendant Promontory has provided these services since 2006. The Island Plaintiffs lack knowledge or information sufficient to form a belief as to

the truth of the remainder of the allegations of Paragraph 119 of Defendant Promontory's Counterclaims, and accordingly, deny them.

31. With respect to the allegations of Paragraph 120 of Defendant Promontory's Counterclaims, the Island Plaintiffs lack knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 120 of Defendant Promontory's Counterclaims, and accordingly, deny them.

32. The Island Plaintiffs admit the allegations of Paragraph 121 of Defendant Promontory's Counterclaims.

33. With respect to the allegations of Paragraph 122 of Defendant Promontory's Counterclaims, the Island Plaintiffs admit that Double Rock has offered a service to broker-dealers under the service mark Reserve Insured Deposits®. The Island Plaintiffs admit that a different service was offered to retail customers under the same mark Reserve Insured Deposits® starting in 1997. The Island Plaintiffs admit that the Reserve Insured Deposits service for broker-dealers which Double Rock has offered competed directly with Promontory. With respect to the remainder of the allegations of Paragraph 122 of Defendant Promontory's Counterclaims, the Island Plaintiffs deny these allegations.

34. With respect to the allegations of Paragraph 123 of Defendant Promontory's Counterclaims, the Island Plaintiffs admit that Double Rock has assisted broker-dealers in establishing MMDA's at banking institutions to hold funds swept from brokerage accounts through the Reserve Insured Deposits service. With respect to the remainder of the allegations of Paragraph 123 of Defendant Promontory's Counterclaims, the Island Plaintiffs deny these allegations.

35. With respect to the allegations of Paragraph 124 of Defendant Promontory's Counterclaims, the Island Plaintiffs admit that on October 21, 1998, Bruce Bent and Bruce Bent

II began to cause to be filed United States patent applications relating to certain aspects of deposit sweep services, which were later assigned to Double Rock.

36. With respect to the allegations of Paragraph 125 of Defendant Promontory's Counterclaims, the Island Plaintiffs admit that on October 21, 1998, the inventors of the '231 Patent, Bruce Bent and Bruce Bent II, caused to be filed U.S. Patent Application Ser. No. 09/176,340 ("the '340 Application") and that this application issued as the '231 Patent on or about April 16, 2002. This patent is currently subject to a reissue proceeding. The Island Plaintiffs admit that the inventors, Bruce Bent and Bruce Bent II, assigned their rights to the '231 Patent to Double Rock, which in turn, assigned its right to the '231 Patent to Island IP. With respect to the remainder of the allegations of Paragraph 125 of Defendant Promontory's Counterclaims, the Island Plaintiffs deny these allegations.

37. With respect to the allegations of Paragraph 126 of Defendant Promontory's Counterclaims, the Island Plaintiffs admit that on April 11, 2003, the inventors, Bruce Bent and Bruce Bent II, caused to be filed U.S. Patent Application Ser. No. 10/411,650 ("the '650 Application") which claims priority from Provisional Application Ser. No. 60/372,347, filed on April 12, 2002, and which matured into the '286 Patent. The '650 Application is a continuation-in-part of U.S. Application Serial No. 10/382,946 ("the '946 Application"), filed on March 6, 2003, which claims priority from Provisional Application Ser. No. 60/442,849, filed on January 27, 2003, and which matured into the '350 Patent. The '650 Application is also a continuation-in-part of U.S. Application Ser. No. 10/071,053 ("the '053 Application"), filed on February 8, 2002, and which matured into the '551 Patent. The '650 Application is also a continuation-in-part of U.S. Application Ser. No. 09/677,535 ("the '535 Application"), filed on October 2, 2000. The '535 Application and the '053 Application are continuations-in-part of the '340 Application which matured into the '231 Patent. The Island Plaintiffs admit that the '650 Application was

unpublished by the USPTO prior to its issuance as the '286 Patent on March 24, 2009. The Island Plaintiffs admit that the '650 Application was assigned from the inventors to Double Rock which in turn assigned its rights to Island IP on December 1, 2008. With respect to the remainder of the allegations of Paragraph 126 of Defendant Promontory's Counterclaims, the Island Plaintiffs deny these allegations.

38. The Island Plaintiffs admit the allegations of Paragraph 127 of Defendant Promontory's Counterclaims.

39. With respect to the allegations of Paragraph 128 of Defendant Promontory's Counterclaims, the Island Plaintiffs admit that on February 8, 2002, the inventors, Bruce Bent and Bruce Bent II, caused to be filed the '053 Application, which matured into the '551 Patent. The '053 Application is a continuation-in-part of the '535 Application, filed on October 2, 2000. The '053 Application is also a continuation-in-part of the '340 Application which matured into the '231 Patent. The Island Plaintiffs admit that the '053 Application was assigned from the inventors to Double Rock, which in turn assigned its rights to Island IP on December 1, 2008. With respect to the remainder of the allegations of Paragraph 128 of Defendant Promontory's Counterclaims, the Island Plaintiffs deny these allegations.

40. The Island Plaintiffs admit the allegations of Paragraph 129 of Defendant Promontory's Counterclaims.

41. With respect to the allegations of Paragraph 130 of Defendant Promontory's Counterclaims, the Island Plaintiffs admit that on March 6, 2003, the inventors, Bruce Bent and Bruce Bent II, caused to be filed the '946 Application as a continuation-in-part of the '053 Application. The Island Plaintiffs admit that the '946 Application was assigned from the inventors to Double Rock, which in turn assigned its rights Island IP on December 1, 2008.

42. The Island Plaintiffs admit the allegations of Paragraph 131 of Defendant Promontory's Counterclaims.

43. With respect to the allegations of Paragraph 132 of Defendant Promontory's Counterclaims, the Island Plaintiffs admit that the applications listed in Paragraph 132 were owned by Double Rock and have been assigned to Island IP. With respect to the remainder of the allegations of Paragraph 132 of Defendant Promontory's Counterclaims, the Island Plaintiffs deny these allegations.

44. With respect to the allegations of Paragraph 133 of Defendant Promontory's Counterclaims, the Island Plaintiffs state that the Patents and Patent Applications speak for themselves. With respect to the remainder of the allegations of Paragraph 133 of Defendant Promontory's Counterclaims, the Island Plaintiffs deny these allegations.

45. The Island Plaintiffs deny the allegations of Paragraph 134 of Defendant Promontory's Counterclaims.

46. The Island Plaintiffs deny the allegations of Paragraph 135 of Defendant Promontory's Counterclaims.

47. The Island Plaintiffs deny the allegations of Paragraph 136 of Defendant Promontory's Counterclaims.

48. The Island Plaintiffs deny the allegations of Paragraph 137 of Defendant Promontory's Counterclaims.

49. The Island Plaintiffs deny the allegations of Paragraph 138 of Defendant Promontory's Counterclaims.

50. With respect to the allegations of Paragraph 139 of Defendant Promontory's Counterclaims, the Island Plaintiffs admit that it did not intentionally fail to disclose any non-cumulative material information to the USPTO and that the IDS's and prosecution histories of

the '231 Patent (including its pending reissue) and the '286 and '551 Patents speak for themselves. With respect to the remainder of the allegations of Paragraph 139 of Defendant Promontory's Counterclaims, the Island Plaintiffs deny these allegations.

51. With respect to the allegations of Paragraph 140 of Defendant Promontory's Counterclaims, the Island Plaintiffs admit that Promontory wrote a letter dated February 23, 2009, to the Island Plaintiffs. The Island Plaintiffs state that the February 23, 2009 letter and the prosecution history of the '551 Patent, including the March 3, 2009 IDS, speak for themselves. With respect to the remainder of the allegations of Paragraph 140 of Defendant Promontory's Counterclaims, the Island Plaintiffs deny these allegations.

52. With respect to the allegations of Paragraph 141 of Defendant Promontory's Counterclaims, the Island Plaintiffs admit that Double Rock was previously known as Reserve Management Corporation, and in that name had commenced correspondence with Defendant Promontory since at least 2006. The Island Plaintiffs admit that on October 10, 2008, Double Rock formed Island IP and LIDs Capital, then known as Reserve Management Corporation, LLC, as wholly-owned entities. The Island Plaintiffs admit that on December 1, 2008, Double Rock assigned the '231 Patent, and the applications which matured into the '286, '551 and '350 Patents, as well as other patent applications to Island IP. The Island Plaintiffs admit that Island IP granted an exclusive license to the '231 Patent, and the applications which matured into the '286, '551 and '350 Patents, as well as other patent applications to LIDs Capital with respect to providing cash management services for broker dealers and asset managers. The Island Plaintiffs admit that Double Rock is a sublicensee of LIDs Capital with respect to the same patents in the same fields of use as the exclusive license of LIDs Capital. With respect to the remainder of the allegations of Paragraph 141 of Defendant Promontory's Counterclaims, the Island Plaintiffs deny these allegations.

53. With respect to the allegations of Paragraph 142 of Defendant Promontory's Counterclaims, the Island Plaintiffs admit that Island IP is a wholly-owned subsidiary of Double Rock. The Island Plaintiffs admit that Island IP maintains its principal place of business in the same location as Double Rock, LIDs Capital and Intrasweep. With respect to the remainder of the allegations of Paragraph 142 of Defendant Promontory's Counterclaims, the Island Plaintiffs deny these allegations.

54. With respect to the allegations of Paragraph 143 of Defendant Promontory's Counterclaims, the Island Plaintiffs admit that Double Rock sent a letter dated May 24, 2006 and that the letter speaks for itself. With respect to the remainder of the allegations of Paragraph 143 of Defendant Promontory's Counterclaims, the Island Plaintiffs deny these allegations.

55. With respect to the allegations of Paragraph 144 of Defendant Promontory's Counterclaims, the Island Plaintiffs admit that Promontory sent a letter dated June 30, 2006, and that the letter speaks for itself. With respect to the remainder of the allegations of Paragraph 144 of Defendant Promontory's Counterclaims, the Island Plaintiffs deny these allegations.

56. With respect to the allegations of Paragraph 145 of Defendant Promontory's Counterclaims, the Island Plaintiffs admit that Double Rock sent a letter dated July 12, 2006, and that the letter speaks for itself. With respect to the remainder of the allegations of Paragraph 145 of Defendant Promontory's Counterclaims, the Island Plaintiffs deny these allegations.

57. With respect to the allegations of Paragraph 146 of Defendant Promontory's Counterclaims, the Island Plaintiffs admit that Promontory sent a letter dated July 18, 2006, and that the letter speaks for itself. With respect to the remainder of the allegations of Paragraph 146 of Defendant Promontory's Counterclaims, the Island Plaintiffs deny these allegations.

58. With respect to the allegations of Paragraph 147 of Defendant Promontory's Counterclaims, the Island Plaintiffs admit that Promontory sent a letter dated October 4, 2006,

and that the letter speaks for itself. With respect to the remainder of the allegations of Paragraph 147 of Defendant Promontory's Counterclaims, the Island Plaintiffs deny these allegations.

59. With respect to the allegations of Paragraph 148 of Defendant Promontory's Counterclaims, the Island Plaintiffs admit that Promontory sent a letter dated October 11, 2006, and that the letter speaks for itself. With respect to the remainder of the allegations of Paragraph 148 of Defendant Promontory's Counterclaims, the Island Plaintiffs deny these allegations.

60. With respect to the allegations of Paragraph 149 of Defendant Promontory's Counterclaims, the Island Plaintiffs admit that Double Rock caused to be filed a trademark application (Ser. No. 76/315,660) with the USPTO for the mark RESERVE INSURED DEPOSITS and states that the prosecution history associated with that filing speaks for itself. With respect to the remainder of the allegations of Paragraph 149 of Defendant Promontory's Counterclaims, the Island Plaintiffs deny these allegations.

61. With respect to the allegations of Paragraph 150 of Defendant Promontory's Counterclaims, the Island Plaintiffs admit that Promontory wrote to Double Rock on November 1, 2006, and that the letter speaks for itself. With respect to the remainder of the allegations of Paragraph 150 of Defendant Promontory's Counterclaims, the Island Plaintiffs deny these allegations.

62. With respect to the allegations of Paragraph 151 of Defendant Promontory's Counterclaims, the Island Plaintiffs admit that Bruce Bent II executed a declaration dated February 27, 2007, which speaks for itself and was submitted to the USPTO during the prosecution of the Island IP patents. With respect to the remainder of the allegations of Paragraph 151 of Defendant Promontory's Counterclaims, the Island Plaintiffs deny these allegations.



63. With respect to the allegations of Paragraph 152 of Defendant Promontory's Counterclaims, the Island Plaintiffs admit that Double Rock sent a letter dated March 2, 2007, and that the letter speaks for itself. With respect to the remainder of the allegations of Paragraph 152 of Defendant Promontory's Counterclaims, the Island Plaintiffs deny these allegations.

64. With respect to the allegations of Paragraph 153 of Defendant Promontory's Counterclaims, the Island Plaintiffs admit that Promontory sent a letter dated May 1, 2007, and that the letter speaks for itself. With respect to the remainder of the allegations of Paragraph 153 of Defendant Promontory's Counterclaims, the Island Plaintiffs deny these allegations.

65. With respect to the allegations of Paragraph 154 of Defendant Promontory's Counterclaims, the Island Plaintiffs admit that Double Rock and Island IP sent a letter dated March 10, 2009, and that the letter speaks for itself. With respect to the remainder of the allegations of Paragraph 154 of Defendant Promontory's Counterclaims, the Island Plaintiffs deny these allegations.

66. The Island Plaintiffs deny the allegations of Paragraph 155 of Defendant Promontory's Counterclaims.

67. The Island Plaintiffs deny the allegations of Paragraph 156 of Defendant Promontory's Counterclaims.

68. The Island Plaintiffs deny the allegations of Paragraph 157 of Defendant Promontory's Counterclaims.

69. With respect to the allegations of Paragraph 158 of Defendant Promontory's Counterclaims, the Island Plaintiffs admit that Double Rock has communicated with Linsco/Private Ledger Corporation ("LPL"), Dreyfus Corporation ("Dreyfus"), Oppenheimer & Co., Inc. ("Oppenheimer"), Reich & Tang Asset Management, LLC ("Reich & Tang"), and A.G. Edwards & Sons, Inc. ("A.G. Edwards"). Upon information and belief, the Island Plaintiffs

admit that LPL, Dreyfus, Oppenheimer and Reich & Tang were and are actual customers of Defendant Promontory relating to the IND Service and thus there was no loss of any business relationship. Since Promontory's Counterclaim does not specify which communication it is referencing, the Island Plaintiffs lack knowledge or information sufficient to form a belief as to the truth of the remainder of the allegations of Paragraph 158 of Defendant Promontory's Counterclaims, and accordingly, deny them.

70. With respect to the allegations of Paragraph 159 of Defendant Promontory's Counterclaims, the Island Plaintiffs admit that correspondence from one or more of the Island Plaintiffs with the third parties speaks for itself.

71. With respect to the allegations of Paragraph 160 of Defendant Promontory's Counterclaims, the Island Plaintiffs admit that Double Rock wrote a July 17, 2007, letter to Dreyfus and that the letter speaks for itself. With respect to the remainder of the allegations of Paragraph 160 of Defendant Promontory's Counterclaims, the Island Plaintiffs deny these allegations.

72. With respect to the allegations of Paragraph 161 of Defendant Promontory's Counterclaims, the Island Plaintiffs admit that Double Rock wrote letters to Oppenheimer and Reich & Tang on September 5, 2007 and that the letters speaks for themselves.

73. The Island Plaintiffs deny the allegations of Paragraph 162 of Defendant Promontory's Counterclaims.

74. The Island Plaintiffs deny the allegations of Paragraph 163 of Defendant Promontory's Counterclaims.

75. The Island Plaintiffs deny the allegations of Paragraph 164 of Defendant Promontory's Counterclaims.

76. The Island Plaintiffs deny the allegations of Paragraph 165 of Defendant Promontory's Counterclaims.

77. The Island Plaintiffs deny the allegations of Paragraph 166 of Defendant Promontory's Counterclaims.

78. With respect to the allegations of Paragraph 167 of Defendant Promontory's Counterclaims, the Island Plaintiffs admit that Double Rock issued March 30, 2009 and April 14, 2009 press releases and that the press releases speaks for themselves. With respect to the remainder of the allegations of Paragraph 167 of Defendant Promontory's Counterclaims, the Island Plaintiffs deny these allegations.

79. With respect to the allegations of Paragraph 168 of Defendant Promontory's Counterclaims, the Island Plaintiffs admit that Double Rock issued a March 30, 2009, press release and that the press release speaks for itself. With respect to the remainder of the Island Plaintiffs' allegations of Paragraph 168 of Defendant Promontory's Counterclaims, the Island Plaintiffs deny these allegations.

80. With respect to the allegations of Paragraph 169 of Defendant Promontory's Counterclaims, the Island Plaintiffs admit that Double Rock issued a March 24, 2009, press release and a March 30, 2009, press release, and that these press releases speak for themselves. With respect to the remainder of the allegations of Paragraph 169 of Defendant Promontory's Counterclaims, the Island Plaintiffs deny these allegations.

81. The Island Plaintiffs deny the allegations of Paragraph 170 of Defendant Promontory's Counterclaims.

82. With respect to the allegations of Paragraph 171 of Defendant Promontory's Counterclaims, the Island Plaintiffs admit that Double Rock issued an April 14, 2009, press release and that the press release speaks for itself. With respect to the remainder of the

allegations of Paragraph 171 of Defendant Promontory's Counterclaims, the Island Plaintiffs deny these allegations.

83. With respect to the allegations of Paragraph 172 of Defendant Promontory's Counterclaims, the Island Plaintiffs admit that Double Rock issued an April 15, 2009, press release and that the press release and the referenced April 14, 2009, Double Rock Press release speak for themselves. With respect to the remainder of the allegations of Paragraph 172 of Defendant Promontory's Counterclaims, the Island Plaintiffs deny these allegations.

84. The Island Plaintiffs deny the allegations of Paragraph 173 of Defendant Promontory's Counterclaims.

85. With respect to the allegations of Paragraph 174 of Defendant Promontory's Counterclaims, the Island Plaintiffs admit that Double Rock issued March 24, 2009 and April 15, 2009, press releases and that the press releases speak for themselves.

86. The Island Plaintiffs deny the allegations of Paragraph 175 of Defendant Promontory's Counterclaims.

**THE ISLAND PLAINTIFFS' REPLY TO PROMONTORY'S COUNTERCLAIMS**

**COUNT I**

**Declaratory Judgment of Non-Infringement of the '231 Patent**

87. With respect to the allegations of Paragraph 176 of Defendant Promontory's Counterclaims, the Island Plaintiffs incorporate herein their responses to Paragraphs 90 through 175 of Defendant Promontory's Counterclaims with the same force and effect as if set forth in full below.

88. The Island Plaintiffs deny the allegations of Paragraph 177 of Defendant Promontory's Counterclaims.

89. The Island Plaintiffs deny the allegations of Paragraph 178 of Defendant Promontory's Counterclaims.

90. The Island Plaintiffs deny the allegations of Paragraph 179 of Defendant Promontory's Counterclaims.

91. The Island Plaintiffs deny the allegations of Paragraph 180 of Defendant Promontory's Counterclaims.

## COUNT II

### Declaratory Judgment of Invalidity of the '231 Patent

92. With respect to the allegations of Paragraph 181 of Defendant Promontory's Counterclaims, the Island Plaintiffs incorporate herein their responses to Paragraphs 90 through 180 of Defendant Promontory's Counterclaims with the same force and effect as if set forth in full below.

93. The Island Plaintiffs deny the allegations of Paragraph 182 of Defendant Promontory's Counterclaims.

94. The Island Plaintiffs deny the allegations of Paragraph 183 of Defendant Promontory's Counterclaims.

95. The Island Plaintiffs deny the allegations of Paragraph 184 of Defendant Promontory's Counterclaims.

96. The Island Plaintiffs deny the allegations of Paragraph 185 of Defendant Promontory's Counterclaims.

## COUNT III

### Declaratory Judgment of Unenforceability of the '231 Patent

97. With respect to the allegations of Paragraph 186 of Defendant Promontory's Counterclaims, the Island Plaintiffs incorporate herein their responses to Paragraphs 90 through

185 of Defendant Promontory's Counterclaims with the same force and effect as if set forth in full below.

98. The Island Plaintiffs deny the allegations of Paragraph 187 of Defendant Promontory's Counterclaims.

99. The Island Plaintiffs deny the allegations of Paragraph 188 of Defendant Promontory's Counterclaims.

100. The Island Plaintiffs deny the allegations of Paragraph 189 of Defendant Promontory's Counterclaims.

101. The Island Plaintiffs deny the allegations of Paragraph 190 of Defendant Promontory's Counterclaims.

102. The Island Plaintiffs deny the allegations of Paragraph 191 of Defendant Promontory's Counterclaims.

103. The Island Plaintiffs deny the allegations of Paragraph 192 of Defendant Promontory's Counterclaims.

104. The Island Plaintiffs deny the allegations of Paragraph 193 of Defendant Promontory's Counterclaims.

105. The Island Plaintiffs deny the allegations of Paragraph 194 of Defendant Promontory's Counterclaims.

#### COUNT IV

##### Declaratory Judgment of Non-Infringement of the '286 Patent

106. With respect to the allegations of Paragraph 195 of Defendant Promontory's Counterclaims, the Island Plaintiffs incorporate herein their responses to Paragraphs 90 through 194 of Defendant Promontory's Counterclaims with the same force and effect as if set forth in full below.

107. The Island Plaintiffs deny the allegations of Paragraph 196 of Defendant Promontory's Counterclaims.

108. With respect to the allegations of Paragraph 197 of Defendant Promontory's Counterclaims, the Island Plaintiffs admit there is an actual and justiciable controversy between Defendant Promontory and the Island Plaintiffs and that this controversy is of sufficient immediacy and reality to warrant a decision on the merits. The Island Plaintiffs deny the remaining allegations of Paragraph 197 of Defendant Promontory's Counterclaims.

109. The Island Plaintiffs deny the allegations of Paragraph 198 of Defendant Promontory's Counterclaims.

110. The Island Plaintiffs deny the allegations of Paragraph 199 of Defendant Promontory's Counterclaims.

#### COUNT V

##### Declaratory Judgment of Invalidity of the '286 Patent

111. With respect to the allegations of Paragraph 200 of Defendant Promontory's Counterclaims, the Island Plaintiffs incorporate herein their responses to Paragraphs 90 through 199 of Defendant Promontory's Counterclaims with the same force and effect as if set forth in full below.

112. The Island Plaintiffs deny the allegations of Paragraph 201 of Defendant Promontory's Counterclaims.

113. With respect to the allegations of Paragraph 202 of Defendant Promontory's Counterclaims, the Island Plaintiffs admit there is an actual and justiciable controversy between Defendant Promontory and the Island Plaintiffs and that this controversy is of sufficient immediacy and reality to warrant a decision on the merits. The Island Plaintiffs deny the remaining allegations of Paragraph 202 of Defendant Promontory's Counterclaims.

114. The Island Plaintiffs deny the allegations of Paragraph 203 of Defendant Promontory's Counterclaims.

115. The Island Plaintiffs deny the allegations of Paragraph 204 of Defendant Promontory's Counterclaims.

COUNT VI

Declaratory Judgment of Unenforceability of the '286 Patent

116. With respect to the allegations of Paragraph 205 of Defendant Promontory's Counterclaims, the Island Plaintiffs incorporate herein their responses to Paragraphs 90 through 204 of Defendant Promontory's Counterclaims with the same force and effect as if set forth in full below.

117. The Island Plaintiffs deny the allegations of Paragraph 206 of Defendant Promontory's Counterclaims.

118. The Island Plaintiffs deny the allegations of Paragraph 207 of Defendant Promontory's Counterclaims.

119. The Island Plaintiffs deny the allegations of Paragraph 208 of Defendant Promontory's Counterclaims.

120. The Island Plaintiffs deny the allegations of Paragraph 209 of Defendant Promontory's Counterclaims.

121. The Island Plaintiffs deny the allegations of Paragraph 210 of Defendant Promontory's Counterclaims.

122. The Island Plaintiffs deny the allegations of Paragraph 211 of Defendant Promontory's Counterclaims.

123. With respect to the allegations of Paragraph 212 of Defendant Promontory's Counterclaims, the Island Plaintiffs deny that there was inequitable conduct committed in



connection with the prosecution of the '231 Patent and thus deny the allegations of Paragraph 212 of Defendant Promontory's Counterclaims.

124. With respect to the allegations of Paragraph 213 of Defendant Promontory's Counterclaims, the Island Plaintiffs admit there is an actual and justiciable controversy between Defendant Promontory and the Island Plaintiffs and that this controversy is of sufficient immediacy and reality to warrant a decision on the merits. The Island Plaintiffs deny the remaining allegations of Paragraph 213 of Defendant Promontory's Counterclaims.

125. The Island Plaintiffs deny the allegations of Paragraph 214 of Defendant Promontory's Counterclaims.

126. The Island Plaintiffs deny the allegations of Paragraph 215 of Defendant Promontory's Counterclaims.

#### COUNT VII

##### Declaratory Judgment of Non-Infringement of the '551 Patent

127. With respect to the allegations of Paragraph 216 of Defendant Promontory's Counterclaims, the Island Plaintiffs incorporate herein their responses to Paragraphs 90 through 216 of Defendant Promontory's Counterclaims with the same force and effect as if set forth in full below.

128. The Island Plaintiffs deny the allegations of Paragraph 217 of Defendant Promontory's Counterclaims.

129. With respect to the allegations of Paragraph 218 of Defendant Promontory's Counterclaims, the Island Plaintiffs admit there is an actual and justiciable controversy between Defendant Promontory and the Island Plaintiffs and that this controversy is of sufficient immediacy and reality to warrant a decision on the merits. The Island Plaintiffs deny the remaining allegations of Paragraph 218 of Defendant Promontory's Counterclaims.

130. The Island Plaintiffs deny the allegations of Paragraph 219 of Defendant Promontory's Counterclaims.

131. The Island Plaintiffs deny the allegations of Paragraph 220 of Defendant Promontory's Counterclaims.

#### COUNT VIII

##### Declaratory Judgment of Invalidity of the '551 Patent

132. With respect to the allegations of Paragraph 221 of Defendant Promontory's Counterclaims, the Island Plaintiffs incorporate herein their responses to Paragraphs 90 through 220 of Defendant Promontory's Counterclaims with the same force and effect as if set forth in full below.

133. The Island Plaintiffs deny the allegations of Paragraph 222 of Defendant Promontory's Counterclaims.

134. With respect to the allegations of Paragraph 223 of Defendant Promontory's Counterclaims, the Island Plaintiffs admit there is an actual and justiciable controversy between Defendant Promontory and the Island Plaintiffs and that this controversy is of sufficient immediacy and reality to warrant a decision on the merits. The Island Plaintiffs deny the remaining allegations of Paragraph 223 of Defendant Promontory's Counterclaims.

135. The Island Plaintiffs deny the allegations of Paragraph 224 of Defendant Promontory's Counterclaims.

136. The Island Plaintiffs deny the allegations of Paragraph 225 of Defendant Promontory's Counterclaims.

#### COUNT IX

##### Declaratory Judgment of Unenforceability of the '551 Patent

137. With respect to the allegations of Paragraph 226 of Defendant Promontory's Counterclaims, the Island Plaintiffs incorporate herein their responses to Paragraphs 90 through

225 of Defendant Promontory's Counterclaims with the same force and effect as if set forth in full below.

138. The Island Plaintiffs deny the allegations of Paragraph 227 of Defendant Promontory's Counterclaims.

139. The Island Plaintiffs deny the allegations of Paragraph 228 of Defendant Promontory's Counterclaims.

140. The Island Plaintiffs deny the allegations of Paragraph 229 of Defendant Promontory's Counterclaims.

141. The Island Plaintiffs deny the allegations of Paragraph 230 of Defendant Promontory's Counterclaims.

142. The Island Plaintiffs deny the allegations of Paragraph 231 of Defendant Promontory's Counterclaims.

143. The Island Plaintiffs deny the allegations of Paragraph 232 of Defendant Promontory's Counterclaims.

144. With respect to the allegations of Paragraph 233 of Defendant Promontory's Counterclaims, the Island Plaintiffs deny that there was inequitable conduct committed in connection with the prosecution of the '231 and '286 Patents and thus deny the allegations of Paragraph 233 of Defendant Promontory's Counterclaims.

145. With respect to the allegations of Paragraph 234 of Defendant Promontory's Counterclaims, the Island Plaintiffs admit there is an actual and justiciable controversy between Defendant Promontory and the Island Plaintiffs and that this controversy is of sufficient immediacy and reality to warrant a decision on the merits. The Island Plaintiffs deny the remaining allegations of Paragraph 234 of Defendant Promontory's Counterclaims.

146. The Island Plaintiffs deny the allegations of Paragraph 235 of Defendant Promontory's Counterclaims.

147. The Island Plaintiffs deny the allegations of Paragraph 236 of Defendant Promontory's Counterclaims.

COUNT X

Tortious Interference with Business Relations

148. With respect to the allegations of Paragraph 237 of Defendant Promontory's Counterclaims, the Island Plaintiffs incorporate herein their responses to Paragraphs 90 through 236 of Defendant Promontory's Counterclaims with the same force and effect as if set forth in full below.

149. With respect to the allegations of Paragraph 238 of Defendant Promontory's Counterclaims, the Island Plaintiffs admit that Promontory and Double Rock has competed in the market for providing "deposit sweep services" to broker-dealers.

150. The Island Plaintiffs deny the allegations of Paragraph 239 of Defendant Promontory's Counterclaims.

151. The Island Plaintiffs deny the allegations of Paragraph 240 of Defendant Promontory's Counterclaims.

152. The Island Plaintiffs deny the allegations of Paragraph 241 of Defendant Promontory's Counterclaims.

153. The Island Plaintiffs deny the allegations of Paragraph 242 of Defendant Promontory's Counterclaims.

154. The Island Plaintiffs deny the allegations of Paragraph 243 of Defendant Promontory's Counterclaims.

155. The Island Plaintiffs deny the allegations of Paragraph 244 of Defendant Promontory's Counterclaims.

156. The Island Plaintiffs deny the allegations of Paragraph 245 of Defendant Promontory's Counterclaims.

157. The Island Plaintiffs deny the allegations of Paragraph 246 of Defendant Promontory's Counterclaims.

158. The Island Plaintiffs deny the allegations of Paragraph 247 of Defendant Promontory's Counterclaims.

COUNT XI

Unfair Competition under Applicable State Law

159. With respect to the allegations of Paragraph 248 of Defendant Promontory's Counterclaims, the Island Plaintiffs incorporate herein their responses to Paragraphs 90 through 247 of Defendant Promontory's Counterclaims with the same force and effect as if set forth in full below.

160. With respect to the allegations of Paragraph 249 of Defendant Promontory's Counterclaims, the Island Plaintiffs admit that Double Rock has competed in the market for providing "deposit sweep services" to broker-dealers. The Island Plaintiffs deny the remaining allegations of Paragraph 238 Defendant Promontory's Counterclaims.

161. The Island Plaintiffs deny the allegations of Paragraph 250 of Defendant Promontory's Counterclaims.

162. The Island Plaintiffs deny the allegations of Paragraph 251 of Defendant Promontory's Counterclaims.

163. The Island Plaintiffs deny the allegations of Paragraph 252 of Defendant Promontory's Counterclaims.

164. The Island Plaintiffs deny the allegations of Paragraph 253 of Defendant Promontory's Counterclaims.

165. The Island Plaintiffs deny the allegations of Paragraph 254 of Defendant Promontory's Counterclaims.

166. The Island Plaintiffs deny the allegations of Paragraph 255 of Defendant Promontory's Counterclaims.

167. The Island Plaintiffs deny the allegations of Paragraph 256 of Defendant Promontory's Counterclaims.

#### COUNT XII

##### Unfair Competition in Violation of Section 43(a) of the Lanham Act

168. With respect to the allegations of Paragraph 257 of Defendant Promontory's Counterclaims, the Island Plaintiffs incorporate herein their responses to Paragraphs 90 through 256 of Defendant Promontory's Counterclaims with the same force and effect as if set forth in full below.

169. The Island Plaintiffs deny the allegations of Paragraph 258 of Defendant Promontory's Counterclaims.

170. The Island Plaintiffs deny the allegations of Paragraph 259 of Defendant Promontory's Counterclaims.

171. The Island Plaintiffs deny the allegations of Paragraph 260 of Defendant Promontory's Counterclaims.

172. The Island Plaintiffs deny the allegations of Paragraph 261 of Defendant Promontory's Counterclaims.

173. The Island Plaintiffs deny the allegations of Paragraph 262 of Defendant Promontory's Counterclaims.

174. The Island Plaintiffs deny the allegations of Paragraph 263 of Defendant Promontory's Counterclaims.

175. The Island Plaintiffs deny the allegations of Paragraph 264 of Defendant Promontory's Counterclaims.

176. The Island Plaintiffs deny the allegations of Paragraph 265 of Defendant Promontory's Counterclaims.

#### DEMAND FOR JUDGMENT

177. The Island Plaintiffs deny that Defendant Promontory is entitled to any relief sought in its demand for judgment.

#### AFFIRMATIVE DEFENSES

##### First Affirmative Defense

178. Defendant Promontory's Counterclaims fail to state a claim on which relief can be granted.

##### Second Affirmative Defense

179. Counts III, VI and IX of Defendant Promontory's Counterclaims fail to identify material prior art which was withheld during the prosecution of any patent owned by Island IP.

##### Third Affirmative Defense

180. The Island Plaintiffs had no intent to deceive the USPTO and Counts III, VI and IX of Defendant Promontory's Counterclaims fail to establish an intent to deceive during the prosecution of the '231, '286, '551 or '350 Patents.

##### Fourth Affirmative Defense

181. During the procurement of the '231, '286, '551 and '350 Patents, the applicants and their representatives at all times complied with their duty of candor and good faith.

Fifth Affirmative Defense

182. Defendant Promontory's Counterclaims regarding inequitable conduct (Counts III, VI, IX) and federal and state law business torts (Counts X-XII) are not pled with particularity pursuant to Rule 9(b) of the Federal Rules of Civil Procedures.

Sixth Affirmative Defense

183. Defendant Promontory's Counterclaims are barred from equitable relief by the doctrine of unclean hands.

Seventh Affirmative Defense

184. The '231, '286 and '551 Patents are not invalid.

Eighth Affirmative Defense

185. Defendant Promontory has, and is, infringing directly and/or indirectly at least Claim 1 of the '286 Patent and at least Claim 18 of the '551 Patent.

Ninth Affirmative Defense

186. This Court lack subject matter jurisdiction to hear Counts I-III of Defendant Promontory's Counterclaims regarding the '231 Patent.

Tenth Affirmative Defense

187. The Island Plaintiffs reserve the right to assert additional defenses as may be appropriate upon completion of its investigation and discovery.

PRAYER FOR RELIEF

WHEREFORE, the Island Plaintiffs request for judgment against Defendant Promontory is as follows:

I. WITH RESPECT TO THE '231 PATENT

- A. That Counts I-III of Defendant Promontory's Counterclaims be dismissed.
- B. That the Court award such other and further relief as the Court deems just and proper.



II. WITH RESPECT TO THE '286 PATENT

A. The Defendant Promontory be held liable for infringement of at least Claim 1 of the '286 Patent.

B. That a permanent injunction issue against Defendant Promontory, its officers, agents, servants, employees, attorneys, parent and subsidiary corporations, assigns and successors in interest, and those persons in active concert or participation with Defendant Promontory, enjoining it from continued acts of infringement of the '286 Patent.

C. That the Court Order Defendant Promontory to pay to Plaintiffs Island IP, LIDs Capital and Double Rock damages adequate to compensate Plaintiffs Island IP, LIDs Capital and Double Rock for the act of infringement of Defendant Promontory together with interest and costs, pursuant to 35 U.S.C. § 284.

D. That the Court award such other and further relief as the Court deems just and proper.

III. WITH RESPECT TO THE '551 PATENT

A. That Defendant Promontory be held liable for infringement of at least Claim 18 of the '551 Patent.

B. That a permanent injunction issue against Defendant Promontory, its officers, agents, servants, employees, attorneys, parent and subsidiary corporations, assigns and successors in interest, and those persons in active concert or participation with Defendant Promontory, enjoining it from continued acts of infringement of the '551 Patent.

C. That the Court Order Defendant Promontory to pay to the Island Plaintiffs damages adequate to compensate the Island Plaintiffs for the acts of infringement of Defendant Promontory together with interest and costs, pursuant to 35 U.S.C. § 284.

D. That the Court award such other and further relief as the Court deems just and proper.

Respectfully submitted,

AMSTER, ROTHSTEIN & EBENSTEIN LLP

Dated: New York, New York  
July 9, 2009

By: /s/ Charles R. Macedo  
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UNITED STATES DISTRICT COURT  
 SOUTHERN DISTRICT OF NEW YORK

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ISLAND INTELLECTUAL PROPERTY LLC,	:
LIDS CAPITAL LLC, DOUBLE ROCK	:
CORPORATION, and INTRASWEEP LLC,	:
	:
Plaintiffs,	:
	:
v.	:
	:
PROMONTORY INTERFINANCIAL	:
NETWORK, LLC, MBSC SECURITIES	:
CORPORATION, DEUTSCHE BANK AG,	:
DEUTSCHE BANK TRUST COMPANY	:
AMERICAS, and TOTAL BANK SOLUTIONS,	:
LLC,	:
	:
Defendants.	:
----- x	

Civil Action No.: 09 Civ. 2675 (VM)

**THE ISLAND PLAINTIFFS' REPLY  
 TO DEFENDANT TOTAL BANK  
 SOLUTIONS, LLC'S  
 COUNTERCLAIMS**

Plaintiffs/Counterclaim Defendants Island Intellectual Property LLC ("Island IP"), LIDs Capital LLC ("LIDs Capital"), Double Rock Corporation ("Double Rock"), and Intraseep LLC ("Intraseep") (collectively, "the Island Plaintiffs"), by their attorneys, Amster, Rothstein & Ebenstein LLP, reply to Defendant/Counterclaim Plaintiff Total Bank Solutions, LLC's

(hereinafter "TBS") Counterclaims in accordance with Rule 8 of the Federal Rules of Civil Procedure.

**REPLY TO TBS'S COUNTERCLAIMS**

**THE PARTIES**

1. The Island Plaintiffs admit the allegations of Paragraph 108 of Defendant TBS's Counterclaims.

2. The Island Plaintiffs admit the allegations of Paragraph 109 of Defendant TBS's Counterclaims.

3. The Island Plaintiffs admit the allegations of Paragraph 110 of Defendant TBS's Counterclaims.

4. The Island Plaintiffs admit the allegations of Paragraph 111 of Defendant TBS's Counterclaims.

5. The Island Plaintiffs admit the allegations of Paragraph 112 of Defendant TBS's Counterclaims.

**JURISDICTION AND VENUE**

6. The Island Plaintiffs admit the allegations of Paragraph 113 of Defendant TBS's Counterclaims.

7. The Island Plaintiffs admit the allegations of Paragraph 114 of Defendant TBS's Counterclaims.

8. The Island Plaintiffs admit the allegations of Paragraph 115 of Defendant TBS's Counterclaims.

9. The Island Plaintiffs admit the allegations of Paragraph 116 of Defendant TBS's Counterclaims.

10. The Island Plaintiffs admit the allegations of Paragraph 117 of Defendant TBS's Counterclaims.

11. The Island Plaintiffs admit the allegations of Paragraph 118 of Defendant TBS's Counterclaims.

COUNT I

(Declaratory Judgment of Non-Infringement of U.S. Patent Nos. 7,509,286, 7,519,551, and 7,536,350)

12. With respect to the allegations of Paragraph 119 of Defendant TBS's Counterclaims, the Island Plaintiffs incorporate herein their responses to Paragraphs 108 through 118 of Defendant TBS's Counterclaims with the same force and effect as if set forth in full below.

13. The Island Plaintiffs admit the allegations of Paragraph 120 of Defendant TBS's Counterclaims.

14. The Island Plaintiffs deny the allegations of Paragraph 121 of Defendant TBS's Counterclaims.

15. With respect to the allegations of Paragraph 122 of Defendant TBS's Counterclaims, the Island Plaintiffs admit these allegations, and further state that the Island Plaintiffs have also charged that Defendant TBS has been and still is infringing U.S. Patent No. 7,509,286 ("the '286 Patent"), U.S. Patent No. 7,519,551 ("the '551 Patent"), and U.S. Patent No. 7,536,350 ("the '350 Patent") by at least offering for sale and selling its own insured deposit program which provides the computer and record keeping services for at least the Deutsche IDP.

16. With respect to the allegations of Paragraph 123 of Defendant TBS's Counterclaims, the Island Plaintiffs acknowledge that this is TBS's position, but deny that this position is correct.

17. With respect to the allegations of Paragraph 124 of Defendant TBS's Counterclaims, the Island Plaintiffs admit there is an actual and justiciable controversy between Defendant TBS and the Island Plaintiffs and that this controversy is of sufficient immediacy and reality to warrant a decision on the merits. The Island Plaintiffs deny the remaining allegations of Paragraph 124 of Defendant TBS's Counterclaims.

18. The Island Plaintiffs deny the allegations of Paragraph 125 of Defendant TBS's Counterclaims.

## COUNT II

### (Declaratory Judgment of Invalidity of U.S. Patent Nos. 7,509,286, 7,519,551, and 7,536,350)

19. With respect to the allegations of Paragraph 126 of Defendant TBS's Counterclaims, the Island Plaintiffs incorporate herein their responses to Paragraphs 108 through 125 of Defendant TBS's Counterclaims with the same force and effect as if set forth in full below.

20. The Island Plaintiffs deny the allegations of Paragraph 127 of Defendant TBS's Counterclaims.

21. With respect to the allegations of Paragraph 128 of Defendant TBS's Counterclaims, the Island Plaintiffs admit there is an actual and justiciable controversy between TBS and the Island Plaintiffs and that this controversy is of sufficient immediacy and reality to warrant a decision on the merits. The Island Plaintiffs deny the remaining allegations of Paragraph 128 of Defendant TBS's Counterclaims.

22. The Island Plaintiffs deny the allegations of Paragraph 129 of Defendant TBS's Counterclaims.

COUNT III

(Declaratory Judgment of Unenforceability of U.S. Patent Nos. 7,509,286, 7,519,551, and 7,536,350)

23. With respect to the allegations of Paragraph 130 of Defendant TBS's Counterclaims, the Island Plaintiffs incorporate herein their responses to Paragraphs 108 through 129 of Defendant TBS's Counterclaims with the same force and effect as if set forth in full below.

24. The Island Plaintiffs deny the allegations of Paragraph 131 of Defendant TBS's Counterclaims.

25. The Island Plaintiffs deny the allegations of Paragraph 132 of Defendant TBS's Counterclaims.

26. With respect to the allegations of Paragraph 133 of Defendant TBS's Counterclaims, the Island Plaintiffs admit that U.S. Application Serial No. 10/411,650 ("the '650 Application"), filed on April 11, 2003, which claims priority from Provisional Application Ser. No. 60/372,347, filed on April 12, 2002, and which matured into the '286 Patent, is a continuation-in-part of U.S. Application Serial No. 10/382,946 ("the '946 Application"), filed on March 6, 2003. The '946 Application claims priority from Provisional Application Ser. No. 60/442,849, filed on January 27, 2003, and which matured into the '350 Patent. The '650 Application and the '946 Application are continuations-in-part of U.S. Application Ser. No. 10/071,053 ("the '053 Application"), filed on February 8, 2002, and which matured into the '551 Patent. The '650, '946 and '053 Applications are all continuations-in-part of U.S. Application Ser. No. 09/677,535 ("the '535 Application"), filed on October 2, 2000. The '535 Application and the '053 Application are continuations-in-part of U.S. Application Ser. No. 09/176,340, filed on October 21, 1998, which matured into U.S. Patent No. 6,374,231 ("the '231 Patent"). The Island Plaintiffs admit that the '286, '551 and '350 Patents are related by priority to the '535

Application and '231 Patent. With respect to the remainder of the allegations of Paragraph 133 of Defendant TBS's Counterclaims, the Island Plaintiffs deny these allegations.

27. With respect to the allegations of Paragraph 134 of Defendant TBS's Counterclaims, the Island Plaintiffs admit that Double Rock was formerly known as the Reserve Management Corporation. With respect to the remainder of the allegations of Paragraph 134 of Defendant TBS's Counterclaims, the Island Plaintiffs deny these allegations.

28. With respect to the allegations of Paragraph 135 of Defendant TBS's Counterclaims, the Island Plaintiffs admit that Double Rock's counsel filed a trademark application (Ser. No. 76/315,660) with the USPTO for the mark RESERVE INSURED DEPOSITS and state that the prosecution history associated with that filing speaks for itself.

29. With respect to the allegations of Paragraph 136 of Defendant TBS's Counterclaims, the Island Plaintiffs admit that it filed patent applications that matured into the '286, '551 and '350 Patents, as well as the '231 Patent, and that the corresponding prosecution histories associated with these patent applications speak for themselves.

30. With respect to the allegations of Paragraph 137 of Defendant TBS's Counterclaims, the Island Plaintiffs admit that Bruce Bent II executed a February 27, 2007 declaration and that the declaration and its accompanying attachment speak for themselves.

31. With respect to the allegations of Paragraph 138 of Defendant TBS's Counterclaims, the Island Plaintiffs state that the 2004 report entitled "Brokerage Cash Sweep Options: The Shift from Money Funds to FDIC-Insured Bank Deposit Accounts" published by iMoneyNet speaks for itself. With respect to the remainder of the allegations of Paragraph 138 of Defendant TBS's Counterclaims, the Island Plaintiffs deny these allegations.

32. The Island Plaintiffs deny the allegations of Paragraph 139 of Defendant TBS's Counterclaims.



33. The Island Plaintiffs deny the allegations of Paragraph 140 of Defendant TBS's Counterclaims.

34. With respect to the allegations of Paragraph 141 of Defendant TBS's Counterclaims, the Island Plaintiffs admit that the '650 Application matured into the '286 Patent and that the prosecution history of the '286 Patent speak for itself. With respect to the remainder of the allegations of Paragraph 141 of Defendant TBS's Counterclaims, the Island Plaintiffs deny these allegations.

35. With respect to the allegations of Paragraph 142 of Defendant TBS's Counterclaims, the Island Plaintiffs admit that the '053 Application matured into the '551 Patent and that the prosecution history of the '551 Patent speak for itself. With respect to the remainder of the allegations of Paragraph 142 of Defendant TBS's Counterclaims, the Island Plaintiffs deny these allegations.

36. With respect to the allegations of Paragraph 143 of Defendant TBS's Counterclaims, the Island Plaintiffs admit that the '946 Application matured into the '350 Patent and that the prosecution history of the '350 Patent speak for itself. With respect to the remainder of the allegations of Paragraph 143 of Defendant TBS's Counterclaims, the Island Plaintiffs deny these allegations.

37. The Island Plaintiffs deny the allegations of Paragraph 144 of Defendant TBS's Counterclaims.

38. With respect to the allegations of Paragraph 145 of Defendant TBS's Counterclaims, the Island Plaintiffs admit that Merrill Lynch has developed various cash management products, the details of which were submitted to the USPTO for evaluation during the '286 Patent prosecution in numerous Information Disclosure Statements ("IDS") and that the references associated with those submissions speak for themselves. Similar submissions were

made during the prosecution of the '551 and '350 Patents. The Island Plaintiffs lack knowledge or information sufficient to form a belief as to the truth of the remainder of the allegations of Paragraph 145 of Defendant TBS's Counterclaims, and accordingly, deny them.

39. The Island Plaintiffs deny the allegations of Paragraph 146 of Defendant TBS's Counterclaims.

40. The Island Plaintiffs deny the allegations of Paragraph 147 of Defendant TBS's Counterclaims.

41. With respect to the allegations of Paragraph 148 of Defendant TBS's Counterclaims, the Island Plaintiffs admit that Merrill Lynch has developed various cash management products, the details of which were submitted to the USPTO for evaluation during the '286 Patent prosecution in numerous IDS's and that the references associated with those submissions speak for themselves. Similar submissions were made during the prosecution of the '551 and '350 Patents. The Island Plaintiffs lack knowledge or information sufficient to form a belief as to the truth of the remainder of the allegations of Paragraph 148 of Defendant TBS's Counterclaims, and accordingly, denies them.

42. The Island Plaintiffs deny the allegations of Paragraph 149 of Defendant TBS's Counterclaims.

43. The Island Plaintiffs deny the allegations of Paragraph 150 of Defendant TBS's Counterclaims.

44. With respect to the allegations of Paragraph 151 of Defendant TBS's Counterclaims, the Island Plaintiffs admit that Merrill Lynch has developed various cash management products, the details of which were submitted to the USPTO for evaluation during the '286 Patent prosecution in numerous IDS's and that the references associated with those submissions speak for themselves. Similar submissions were made during the prosecution of the

'551 and '350 Patents. With respect to the remainder of the allegations of Paragraph 151 of Defendant TBS's Counterclaims, the Island Plaintiffs deny these allegations.

45. With respect to the allegations of Paragraph 152 of Defendant TBS's Counterclaims, the Island Plaintiffs admit the Island Plaintiffs, named inventors, or attorneys, agents, or representatives of the Island Plaintiffs who were associated with the filing and prosecution of the then-pending application that led to the issuance of the '551 Patent, submitted an IDS on March 3, 2009, to the USPTO and that the IDS speaks for itself. With respect to the remainder of the allegations of Paragraph 152 of Defendant TBS's Counterclaims, the Island Plaintiffs deny these allegations.

46. With respect to the allegations of Paragraph 153 of Defendant TBS's Counterclaims, the Island Plaintiffs state that the prosecution history of the '551 Patent speak for itself. With respect to the remainder of the allegations of Paragraph 153 of Defendant TBS's Counterclaims, the Island Plaintiffs deny these allegations.

47. The Island Plaintiffs deny the allegations of Paragraph 154 of Defendant TBS's Counterclaims.

48. The Island Plaintiffs deny the allegations of Paragraph 155 of Defendant TBS's Counterclaims.

49. With respect to the allegations of Paragraph 156 of Defendant TBS's Counterclaims, the Island Plaintiffs admit there is an actual and justiciable controversy between TBS and the Island Plaintiffs and that this controversy is of sufficient immediacy and reality to warrant a decision on the merits. The Island Plaintiffs deny the remaining allegations of Paragraph 156 of Defendant TBS's Counterclaims.

50. The Island Plaintiffs deny the allegations of Paragraph 157 of Defendant TBS's Counterclaims.

**PRAYER FOR RELIEF**

51. The Island Plaintiffs deny that Defendant TBS is entitled to any relief sought in its prayer for relief.

**AFFIRMATIVE DEFENSES**

**First Affirmative Defense**

52. Defendant TBS's Counterclaims fail to state a claim on which relief can be granted.

**Second Affirmative Defense**

53. Count III of Defendant TBS's Counterclaims fails to identify material prior art which was withheld during the prosecution of any patent owned by Island IP.

**Third Affirmative Defense**

54. The Island Plaintiffs had no intent to deceive the USPTO and Count III of Defendant TBS's Counterclaims fails to establish an intent to deceive during the prosecution of the '231, '286, '551 or '350 Patents.

**Fourth Affirmative Defense**

55. During the procurement of the '231, '286, '551 and '350 Patents, the applicants and their representatives at all times complied with their duty of candor and good faith.

**Fifth Affirmative Defense**

56. Defendant TBS's Counterclaim regarding inequitable conduct (Count III) is not pled with particularity pursuant to Rule 9(b) of the Federal Rules of Civil Procedure.

**Sixth Affirmative Defense**

57. Defendant TBS's Counterclaims are barred from equitable relief by the doctrine of unclean hands.

**Seventh Affirmative Defense**

58. The '286, '551 and '350 Patents are not invalid.

Eighth Affirmative Defense

59. Defendant TBS has, and is, infringing directly and/or indirectly at least Claim 1 of the '286 Patent, at least Claim 1 of the '551 Patent and at least Claim 12 of the '350 Patent.

Ninth Affirmative Defense

60. The Island Plaintiffs reserve the right to assert additional defenses as may be appropriate upon completion of its investigation and discovery.

PRAYER FOR RELIEF

WHEREFORE, the Island Plaintiffs request for judgment against Defendant TBS is as follows:

I. WITH RESPECT TO THE '286 PATENT

A. The Defendant TBS be held liable for infringement of at least Claim 1 of the '286 Patent.

B. That a permanent injunction issue against Defendant TBS, its officers, agents, servants, employees, attorneys, parent and subsidiary corporations, assigns and successors in interest, and those persons in active concert or participation with Defendant TBS, enjoining it from continued acts of infringement of the '286 Patent.

C. That the Court Order Defendant TBS to pay to Plaintiffs Island IP, LIDs Capital and Double Rock damages adequate to compensate Plaintiffs Island IP, LIDs Capital and Double Rock for the act of infringement of Defendant TBS together with interest and costs, pursuant to 35 U.S.C. § 284.

D. That the Court award such other and further relief as the Court deems just and proper.

II. WITH RESPECT TO THE '551 PATENT

A. That Defendant TBS be held liable for infringement of at least Claim 1 of the '551 Patent.

B. That a permanent injunction issue against Defendant TBS, its officers, agents, servants, employees, attorneys, parent and subsidiary corporations, assigns and successors in interest, and those persons in active concert or participation with Defendant TBS, enjoining it from continued acts of infringement of the '551 Patent.

C. That the Court Order Defendant TBS to pay to the Island Plaintiffs damages adequate to compensate the Island Plaintiffs for the acts of infringement of Defendant TBS together with interest and costs, pursuant to 35 U.S.C. § 284.

D. That the Court award such other and further relief as the Court deems just and proper.

III. WITH RESPECT TO THE '350 PATENT

A. That Defendant TBS be held liable for infringement of at least Claim 12 of the '350 Patent.

B. That a permanent injunction issue against the Defendant TBS, its officers, agents, servants, employees, attorneys, parent and subsidiary corporations, assigns and successors in interest, and those persons in active concert or participation with Defendant TBS, enjoining it from continued acts of infringement of the '350 Patent.

C. That the Court Order Defendant TBS to pay to Plaintiffs Island IP, Intrasweep and Double Rock damages adequate to compensate the Plaintiffs Island IP, Intrasweep and Double Rock for the acts of infringement of Defendant TBS together with interest and costs, pursuant to 35 U.S.C. § 284.

D. That the Court award such other and further relief as the Court deems just and proper.

Respectfully submitted,

AMSTER, ROTHSTEIN & EBENSTEIN LLP

Dated: New York, New York  
July 9, 2009

By: /s/ Charles R. Macedo  
Charles R. Macedo (CM 4980)

Of Counsel:

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